

Horatio Nelson Lay
His Role in British Relations
with
China
1849-1865

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ABSTRACT

An attempt has been made in this study to trace the background, and China career, of Horatio Nelson Lay, an Englishman, who began his public service in the British consular establishment in China and who concluded it in the service of the Ch'ing Imperial government. He achieved notoriety, successively, as British Inspector in the Shanghai foreign customs administration inaugurated in 1854, as interpreter-negotiator in the treaty settlements of Tientsin and Shanghai of 1858, as first Inspector-General of the Imperial Maritime Custom Service and as one of the principals in the development of a European-Chinese naval force (the Lay-Osborn Flotilla), which was disbanded when rejected by the Ch'ing government in 1863. Lay's dismissal followed immediately after this event.

The study discloses that the activities, while carrying out the functions related to these responsibilities, placed him in a key position to influence various aspects of British relations with China during the period. A thesis, based on evaluations of his influence has been formulated, which focusses on an analysis of the nature of his dual role as a servant both of British (occident-oriented) and Ch'ing (Confucian-oriented) interests. The re-examination of evidence previously available and of newly discovered evidence provides the basis for a re-evaluation of his career.

The principal conclusions conveyed by the investigation, analysis and evaluation of the larger body of evidence fall into two categories. As for the direct effects of his influence, except for his contributions to the consolidation of the foreign Inspectorate customs administration, the influence he himself claimed, as well as that ascribed to him by his contemporaries, has been overstated. As for the indirect effects, his contribution to the process of "dialog", a pre-requisite for achieving effective intercourse, was appreciable.

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PREFACE

Apart from the technical problems which I have created for myself, there are only a few about which the reader should be forewarned. The problems are restricted to questions of location of source materials and of orthography. Sources located in depositories to which the public has access constitutes a problem only insofar as time and expense are involved in ferreting them out. A more serious problem arises with respect to sources which can only be found in private collections.

This problem has been dealt with in three ways. Firstly, the citations in the text indicate the location by use of an abbreviated key. Secondly, the Bibliography includes reference to the geographical location of major primary sources in private collections. Finally, materials of exceptional interest have been reproduced or transcribed and have been included as appendices.

Strangely enough, the orthographic problem has been more difficult with respect to "English" than with Chinese. In regard to Chinese, the problem has been dealt with according to fairly common practice for studies in the particular field. Wade-Giles transliteration has been followed in the text except where, in

geographical place names, traditional usage has made an alternate form more common; e.g., Peking, Tientsin, etc.. Chinese ideographs have been included only when there might be some doubt as to the word intended - a situation which is confined to expressions used in direct quotation. A glossary has not been included. All the persons referred to in this study are by now well known by specialists in the field. Although they do not all have individual biographies in "Eminent Chinese of the Ch'ing Period", they are all listed in the index of names. While I am capable of transcribing Chinese ideographs, I am grateful to Mr. David Pong for those that are included in this text.

"English" orthography has been a problem partly because my own early training was in schools in the United States and partly because mid-19th Century "English" was more characteristic of 20th Century "American" English, while 20th Century English is more characteristic of mid-19th Century "American". To make matters worse, the transition in "styles" was taking place more rapidly in the mid-19th Century. However, every effort has been made in the text to conform to current English usage and this applies to technical features of "style" as well as to orthography. Direct quotation, in this connection, has been transcribed to

duplicate as nearly as possible the original model. Under the circumstances, except in cases of unusual deviation from common usage - where the customary editor's designation "[sic]" is inserted it must be assumed that the quoted transcription is "correct".

I find personal acknowledgments in a preface unsettling. It is not just the fear that the name of someone who has made a valuable contribution has been inadvertently omitted that provokes this feeling. It is also because it is literally impossible to refer to all those who have, in one manner or another, provided me with assistance. Consequently, I trust that the acknowledgments made forthwith will be appreciated for what they are: a partial list acknowledging assistance of a special nature.

In the academic sphere, I wish to record that I was stimulated to make the investigations that have led to this study by my first Supervisor, Mr. O. P. B. van der Sprenkel. My Supervisors since 1957 have been more nominal than real. I am deeply indebted to Mrs. Britt Martin (née So [Yin-kit]) who reviewed, and made many suggestions with respect to, my own translations of Chinese material. In order, Professors

D. C. Twitchett, W.G. Beasley, J. K. Fairbank, and J. S. Gregory and Mr. J. Lust have read portions of earlier drafts. The critical comments they have generously provided, calling attention in some cases to factual errors, have been invaluable. Because none of them has read the entire manuscript, it is very easy to concede that while their assistance has improved the final product, I still remain fully accountable for all errors, interpretations, etc.. During the course of my researches I have made use of the services and facilities of well over a score of public archives and libraries. I prefer not to single out any particular individual, since I have always received all the assistance I have asked for from each.

I have one unusual acknowledgment to record. My original study was planned to include an appraisal of H.N. Lay's activities related to initiation of Japanese railway development. While researching the subject, I received the unstinting assistance of Dr. Tanaka Tokihiko (now of the Toyo Bunko), who supplied many source citations and translations. As will be seen, there was more than enough to do in dealing with Lay's China career. In consequence, I felt it only just that Dr. Tanaka's name should be recorded here.

In the non-academic sphere, I do not propose to enumerate all those who have given me access to private collections; their names are recorded in the citations, in the designations used for sources and in the Bibliography. Without exception, all were most generous and most gracious in permitting me to examine and to make transcriptions of any and all materials under their control. Without the materials thus made accessible, there would have been no justification for a re-examination of the subject of this study.

Three special acknowledgments are in order because of special circumstances. I wish to acknowledge the exceptional hospitality accorded me by Andrew, Lord Bruce on the several occasions when I made extended visits to research the Elgin/Bruce collections at Broomhall, Scotland. Except for a reference to his book, "Four Generations in China, Japan, and Korea", Mr. A.C.H. Lay's name does not appear in the study. As a grand-nephew of H. N. Lay's, he was most helpful in supplying leads to other descendants of the Lay family who, in turn, made available source materials. Another member of the family who falls in a similar category has been one of H. N. Lay's grandsons, Adm. H. Nelson Lay II, RCN (Ret.).

The typists of the final draft shall remain nameless, but they are entitled to notice because, in the conscientious performance of their task, they have saved me much time and much anxiety.

There is one for whom there is never an appropriate acknowledgment: one who is as deeply involved in the work as the author and who yet must never really be part of it; one who devotes countless hours of manual labour to deciphering script, to unravelling footnotes and to typing drafts and who spends even more hours of mental suffering, enduring procrastination, lethargy, irritability and the torments of pointless anxiety. Writ large across every page, between tears and laughter, is the help of my patient wife.

October, 1966

Abbreviations for frequently cited sources.

- BPP - Printed British Parliamentary Papers ("Blue Books").
- E/B - Official and Private correspondence of James, Eighth Earl of Elgin and of Sir F.W.A. Bruce from the family collection in Scotland.
- ECC - A.W. Hummel, ed. Eminent Chinese of the Ch'ing Period.
- FL - H.N. Lay's private papers from the collection of Mrs. Frank Lay.
- FO 17/- Correspondence and memoranda on China originally filed in the British Foreign Office, London.
- FO 228/- British Consular and Embassy files: China
- IWSM - Ch'ou-pan i-wu shih-mo ('The complete account of our management of barbarian affairs' [Ch'ing Dynasty]).
- JMA - Jardine Matheson & Co. Archive, University Library Cambridge.
- LCE - London and China Express.
- NCH - North China Herald.

Chapter I

Introduction

British relations with China in the middle decades of the 19th Century marked a new, opening phase in the impact of the two major politico-culture systems: the "Occidental" and the "Confucian". During the period of impact, Great Britain may not have been a "true" representative of the Occidental system and the Ch'ing (Manchu) Dynasty may not have been a "true" representative of the Confucian. Yet, in the historical panorama of human experience, both were as representative of the traditions of their respective systems as any other corporate entity within each of those systems.

At the point of impact, Great Britain represented the principal ingredients of the tradition of occidental ("modern" European) expansionism, albeit in proportions different from those characteristic of earlier centuries: evangelism (acculturation ?), exploration and quest for knowledge, and acquisitiveness. The Manchu Dynasty, considerably Confucianised before its assumption of imperial control, exercised its control through and within a generally acceptable framework of Confucian concepts and values - over-formalised, stereotyped and, perhaps, even sterile, but unquestionably Confucian. In theory the Confucian "aristocracy of intellect" subscribed to views of universalism and humanism. The

system was predominantly agricultural, ethno-centric and exclusionist. The most significant non-representative feature of each was that Great Britain was still an ascendent influence within its own sphere, while the Manchu Dynasty's influence was in a descendent phase within its sphere.

These opening paragraphs undoubtedly are self-indulgent of excessively broad generalisations. A backdrop which is suggestive of long-term influences is, however, essential to balance the excessively narrow limitations required by definitions of the thesis title. In individual and institutional terms, the acceleration in the intensity of impact - considered exclusively as points of contact - constituted a radical transformation of the patterns of preceding decades and, of course, of preceding centuries. This study, being primarily concerned with the role of an individual, Horatio Nelson Lay, whose career in connection with British relations with China coincided with an early phase of the "take-off" period (1847-1865), details only a small sector, of a section, of a very long scroll. While the description and analysis of the small sector may be made intelligible for that portion of the section open to view, the multi-dimensional significance of the scroll ought not to be forgot.

(Conjuring up an allusion to a mural, whose horizontal extremities were obscured by curtains might also be appropriate. The contrast in mural-concept as against scroll-concept might not be too far-fetched.

In the given instance, since the principal focus is on the environment in China, the scroll allusion appeared to be more appropriate.)

Reversing the scroll only slightly, the first phases of impact intensification are disclosed.¹ Without exception, the impulses on an institutional level at least, originated in occidental regions. Though a number of occidental empires were engaged in efforts to develop and/or expand "relations" with the Ch'ing Dynasty, at the end of the 18th and during the early decades of the 19th centuries, Great Britain was most active and most persevering in these efforts. Britain's efforts, while principally motivated by the interests of the East India Company Trading to China (EIC), a monopoly company operating under a Crown Charter but not as a "public" enterprise, had acquired a political character. The objectives of the early missions (the formal means used to develop "relations"), were limited, but the missions were officially

1. The standard introduction is still H.B. Morse, "The International Relations of the Chinese Empire". 3 Vols. (London, 1910, 1918). (V.I, "The Period of Conflict 1834-1860", hereafter cited as Morse, Conflict and V.2, "The Period of Submission 1861-1893", cited as Morse, Submission.) S.F. Wright, "Hart and the Chinese Customs". (Belfast, 1950) in his opening chapter gives a fairly comprehensive account of the early period. (Hereafter cited as Wright, Hart.)

diplomatic in character and some of the objectives were directed toward the regularisation of diplomatic intercourse as well as of intercourse among individuals. The Ch'ing government, satisfied, in the Confucian context, with its own self-sufficiency and with the existing restrictive arrangements applied to commercial intercourse, was unwilling, and probably unable, to comprehend the nature of the overtures. All efforts were, in essence, turned aside so that formally, at least, conditions remained unchanged.

Alterations in the Occidental "system", however, and informal developments on the South China Coast, not only resulted in a marked change in the conditions of intercourse, but also resulted in a relatively rapid growth in impact intensification. The War of Independence in North America led to the victory of thirteen former British colonies. In increasing numbers former British subjects were trading with China, free of the EIC monopoly.

In Britain itself, new concepts in economic thought, emerging at the same time as new patterns of economic activity evolved from technological and manufacturing innovations, gradually resulted in the adoption of a "free trade" policy. In 1833/34, the monopoly charter of the EIC was not renewed. Even before the policy had become official, non-EIC authorised trade had been expanding. In any event, as a successor to the control previously exercised by the EIC, the British Government established a Superintendency of Trade, which initially involved little more than altering the functions of

the EIC China-based officers and investing them with a limited form of diplomatic responsibility. Such as it was, it was H.B.M.'s China Establishment.²

Although some cognisance of some of these alterations was taken by officials at various levels of Ch'ing officialdom, on the whole the Ch'ing framework of "official" intercourse remained unchanged.³ In this respect, the impact growth was "informal", in a manner of speaking regularised, but un-regulated. In another significant respect, impact growth was "illegal" as well as "informal".

Beginning in the late 18th century, and continuing through the first decades of the 19th, there was a sharply rising increase in opium addiction with a corresponding rise in opium consumption, among the Ch'ing population. The addiction was fostered and the opium willingly supplied by most of the foreign traders, of whom the largest group was British. Opium consumption violated the statutes of the Ch'ing government, but ineffectual controls had resulted in the "intercourse" connected with it assuming its "illegal" character both within the territorial limits for general trade sanctioned by the

2. For an account based on British records, see W.C. Costin, "Great Britain and China". (Oxford, 1937)

3. For an excellent background account which covers the years up to 1854: J.K. Fairbank, "Trade and Diplomacy on the China Coast". 2 Vols. (Cambridge, Mass., 1953). (Hereafter cited as Fairbank, Trade.)

Ch'ing government and in the context of foreign traders "illegally" engaging in the opium trade along the China Coast beyond the limits sanctioned for general trade. For the purpose of this introduction, the importance of this development is that the profitability and expansion of the trade, at one and the same time, stimulated the impact growth and provoked the reinstitution of restrictive and exclusionist measures by the Ch'ing Authorities.

Activities of foreigners related to scientific and religious interests were also increasing, particularly in the 1820' and 30's. These were neither significant nor related to any important, discernible interests of either the occidental (the French missionary activities being the exception) or the Confucian systems. Their main effect was to broaden the range of impacts through "informal" channels.

All in all, the condition of "intercourse", of all forms, had outstripped the facilities for comprehensible or effective intercourse. In consequence, most of the intercourse was carried on in an atmosphere of unreconciled misunderstanding and in pursuit of incompatible and contradictory objectives. The extent of the intercourse (the emphasis given to it here notwithstanding), admittedly a minor feature of the environment of both systems, was not great enough to impress on the participants strongly enough the need for personnel trained to understand, and thus to be able to cope with, the problems created by the intercourse. On the British side,

attention to this aspect was dilatory; on the Ch'ing side it was obscurantist. The result was a cumulative sense of frustration and friction and evermore frequent outbursts of hostility.

Despite another relatively superficial British effort, through a diplomatic mission - Lord Napier's of 1834¹ (and partly because of it) and despite the incongruous efforts of the Ch'ing Authorities to eliminate the principal causes of hostility (and partly because of them), the British representatives resorted to armed force to impose a framework for intercourse that was acceptable to them. The British Government condoned and prosecuted the first Anglo-Chinese War. The expedition was so far victorious by 1842 as to be able to force the Ch'ing Authorities to "negotiate" and ratify the Treaty of Nanking.

The details and significance of the treaty settlement (including a supplementary commercial treaty) are too well known to need repeating here. As far as "relations" with China were concerned, a modified form of "diplomacy" was instituted. This expanded the functions of the Superintendency of Trade (combined in part with the administration of the new colony of Hongkong) to act as a centre of control for Consulates to be established at the five ports opened to trade and commerce. The enlarged Establishment was expected to ensure that the regulatory provisions of the settlement were imple-

mented and to oversee and adjudicate the affairs of British nationals, participants in the intercourse sanctioned at the ports (the opium trade being excluded from the terms of settlement).

The settlement appeared to open the door to the possibility of a more sophisticated level of intercourse between the two "systems". Within a few years, however, though the intentions of the British Authorities may have been positive, only minimal facilities were maintained at each of the ports - even if for nothing else than as a matter of prestige, all the facilities had to be maintained. Still no formal or systematic programme was developed, as official policy either in Britain or in China, to take advantage of the new opportunities. It also soon became apparent that the Ch'ing Authorities (as distinct from a few individual Ch'ing officials) had no intention of availing themselves of these "opportunities". Except at Shanghai, the most northerly of the ports opened, Ch'ing policy was almost as exclusionist as it had previously been in the south. The impact growth of superficial intercourse continued to outstrip the effective facilities for developing forms of intercourse which would permit the two "systems" to become more intelligible to each other.

This sketch-narrative has served to fill in the back-ground of some aspects of the developments in Britain's relations with China for the period prior to the commencement of H.N. Lay's career in

China. The developments narrated have indicated one pattern of conditions which created a demand for organising a "Service" constituted to promote more effective intercourse with the authorities of the Ch'ing Empire. Another pattern of conditions evolved out of the need to supply personnel specifically recruited and trained to man the "Service". The examination of the early years of H.N. Lay's life in part serves to focus on various lines of development of this latter pattern since he was the son of one of the first Consuls of the China Service.

Chapter II

Early Influences on H.N. Lay

To initiate the examination referred to in the Introduction it is desirable, for two reasons, to give some consideration to the influence which G(eorge) Tradescant Lay,¹ H.N. Lay's father, might have had upon his son. The first reason is apparent. It would be desirable in any case to seek to determine the roots of character development in H.N. Lay. The obvious place to start is with his immediate family. In a number of respects the outlook and activities of Lay's parents, who were perhaps characteristically "English", were, nonetheless, not completely conventional in the milieu of the first half of the nineteenth century. In the following pages, the effect this had on H.N. Lay's formative years will be considered.

1. G.T. Lay, from the earliest record of his public activities (1825) until his death in 1845, was known to his contemporaries and signed himself as "Tradescant" or "G. Tradescant" Lay. Thus, Adm. 3/207 Min. 68.5, Minute 23 March 1825, "Mr. Tradescant Lay to be appointed 'Naturalist' to the voyage about to be undertaken by Capt. Beechey in His Majesty's Ship Blossom with a salary of £160 a year. Six months advance to be paid to him." For signed despatches on the eve of his death, cf. FO 228/50, despatches No.33 passim. He apparently insisted on this name to give credence to his claim that he was descended from the John Tredecants [sic], father and son, well-known naturalists of the early 17th Century. Cf. "Notes and Queries" (London) Vol. V. No. 130 (April 24, 1852) pp. 385-386.

The second reason is related to the fact that G.T. Lay, by virtue of his own appointment to the China service, strongly, though largely indirectly, affected the start of his son's career in that service. Few young men of the period were able to choose their careers, but in a more significant sense, H.N. Lay's career was thrust upon him. The examination of this aspect will serve as the connecting link between this chapter and the one that follows.

Before 1841, despite the growth in trade, the increase in the number of British subjects active in the coastal regions of Southeast China and the desire of the Government to place relations with the Ch'ing rulers on a formal diplomatic basis, little was done to meet the need of recruiting or training personnel for a "China" establishment. The turning point in this situation can be pinpointed through tracing the experience of G. Tradescant Lay.

G.T. Lay was a naturalist by vocation and a missionary by avocation. In the former capacity he had acquired his first experience in Southeast Asia and the Pacific when he had accompanied Captain Beechey's expedition on H.M.S. "Blossom",² which lasted from 1825-1828. In the latter capacity, he had again journeyed to

2. Vide antea note 1.

Southeast Asia as agent for the British and Foreign Bible Society on a contract that covered the years 1836-1839³. During this engagement, he had developed a close working relationship with S. Wells Williams and Charles Gutzlaff, both of whom were then engaged in missionary activities.

The BFBS project was discontinued for a number of reasons. Among these were that Lay was subject to frequent illness, that the restrictions placed by the Ch'ing Authorities on intercourse limited the opportunities for dissemination of tracts, and that Lay was unable to find any vessels plying the South China Seas not engaged in the illicit opium traffic upon which to take passage in order to promote his evangelical work.⁴

3. G.T. Lay found it difficult to keep his activities differentiated. While serving as naturalist in 1827, he was distributing Dr. Robert Morrison's biblical tracts among the natives contacted during the expedition. F.W. Beechey, "Narrative of a Voyage on H.M.S. 'Blossom' 1825-1828" 2 pts. (London 1831) p. 491. While serving as BFBS Agent, he was still concerned about scientific exploration, BFBS Foreign Correspondence. Inward Vol. 3 (1836) 18/8/36; also cf. Inward Vol. II (1837) p. 78. "I remember that I came to China not to practice physic, but to distribute Bibles though I am sometimes compelled to do a little this way" Letter dated from Macao, November 21, 1836.

4. William Canton. "A History of the British and Foreign Bible Society" (London 1904) Vol. II, pp. 391-393. For one episode in Lay's unsuccessful efforts to secure a vessel with a cargo excluding opium, see Jardine, Matheson & Co., mss. Macao 2043 (11/7/37), Canton 510 (2/2/38) and 511 (2/2/38) and Macao 2044 (24/4/38).

These various limitations did not preclude Lay from studying Chinese nor from learning something about the country's society and culture.⁵ Consequently, shortly after his return to England, late in 1839, in the midst of reports of the hostilities marking the opening of the first Anglo-Chinese War, Lay offered his services to the British Government.⁶ On this occasion, Lord Palmerston scrawled a pencilled note on the corner of his letter: "Thank him but have no occasion for his Services". Lay was accordingly officially advised of the decision in a letter from the Foreign Office dated January 18, 1840⁷.

Fifteen months later, on learning the news that "Admiral [Sir William] Parker has been appointed to the Indian command" as part of the policy of augmenting the forces engaged in the China theatre, Lay addressed himself directly to Lord Palmerston, noting ".... I feel that I could render the gallant Admiral essential service were I allowed to accompany him in his expedition". On this occasion Palmerston noted simply: "state that I cannot interfere with Admty appointments".⁸

5. G.T. Lay, "The Chinese As They Are" (London, 1841). There were two editions of this work published in German translation, in 1842 and 1843 respectively, and also an edited version published in New York in 1843.

6. FO 17/41. Lay to Wm. Foxe Strangeways. Jan. 10, 1840.

7. Ibid. Draft of letter to G.T. Lay.

8. FO/17/44. 15 Mar. 1841. The reply to Lay was dated March 25.

However, within a month, the Government decided to send a new mission, headed by Sir Henry Pottinger, to prosecute British policy more vigorously than Captain Charles Elliot appeared to be doing.⁹ It is not clear from the Foreign Office records who initiated the next round of contacts between Lay and the F.O. He was, in any event, doubtless aided by the fact that his latest book, "The Chinese As They Are" was reviewed (somewhat indifferently, perhaps) in the "Times" of April 13, 1841.¹⁰ In fact, although his letter of appointment, assigning him to Pottinger's Special Mission, was not drafted until July 15, 1841¹¹, Lay had apparently been in touch with the Foreign Office since at least mid-June. Palmerston saw him on June 24, 1841, and prepared the following memo:

I have settled with Mr. Lay author of a Book upon China & who knows the Chinese Language that he shall go out to China by the overland opportunity at the end of July to be attached to the Mission as Interpreter. He will call at the F.O. ~~Tomorrow~~ To-Morrow or next Day - What Salary would it be proper to give him?¹²

9. For details of the events leading to this decision see Costin, op.cit., Ch. II and Morse, "Conflict" Ch.X.

10. After referring to the fact that Lay's trip of 1836-39, according to "private sources", had been made "in the threefold capacity of missionary, surgeon, and naturalist" the reviewer concludes, "He certainly appears to have been a zealous labourer in the cause, although his zeal, at times, somewhat outsteps his discretion."

11. FO 17/51. Acknowledged by Lay to Lord Leveson, July 16, 1841.

12. FO 17/51. Palmerston memo.

Extracts of the memo that G. Lenox Conyngham prepared, with the notation added by Palmerston, are of some significance for the purposes of this account:

I have seen Mr. Tradescant Lay, and endeavoured to ascertain from him what amount of Salary he himself expected to receive. He seemed to think that £600 a year, or thereabouts, would not be more than sufficient to support himself in China, and his wife and Children in England during his separation from them. He grounds his expectations of a liberal allowance on the circumstance of his being a scholar and a Naturalist, as well as upon his being acquainted with the Chinese language, - laying stress on the advantage which we may probably draw from his extensive knowledge of Natural History, in all it's [sic] branches. - He appears to be desirous of going to China at the present moment not so much for present advantage as with a view to permanent employment hereafter, in case our Chinese affairs should terminate satisfactorily. - I explained to him that it was Lord Palmerston's intention to attach him now to Sir Henry Pottinger's Special Mission and therefore when the Mission should cease, his employment would cease likewise. - He said that he was aware of this; but he observed that, once in China, he would trust his chance of future success in the obtaining of a Consular appointment to the claim which he feels confident he will be able to create for himself by useful exertions and good conduct whilst he remains attached to the Special Mission.

Taking into consideration the amount of salaries allotted to the Interpreters (permanent & temporary) and the salary and allowances granted to Major Malcolm, [Sec'y of Legation] - I submit that it would not be more than Mr. Lay has a fair claim to, if he were allowed a Salary at the rate of £500 a year, - an outfit of £200, - and reimbursement of the expenses of his journey to China.

[Palmerston], I think he may have £600 a year & outfit of 200, and Expenses of his Journey. He will

probably be useful in some permanent position when the Special Mission leaves China.¹³

As a consequence of the foregoing exchanges, Lay's letter of appointment did not specify that he was to be classified as "Interpreter" nor did it refer specifically to the fact that his appointment was only for the duration of the Special Mission. In effect, he was being given a probationary appointment to the "China Service."

Thus G.T. Lay's perseverance and determination (when reflected in his son, these traits were to be judged as "ambition") were repaid. Though the evidence presented is scanty, it is clear that he hoped to be able to take up a permanent post in China.

In the meantime, before leaving for China on July 31, 1841, he made some adjustments in his family arrangements. His two eldest sons, Horatio Nelson (b. July 27, 1832)¹⁴ and George

13. FO 17/51. Conyngham's signed memo was dated June, 30, 1841, and Palmerston's initialled note was dated "7/7-41".

14. All the data of births and baptisms of the children of G.T. Lay are recorded on the flyleaf of the Family Bible of G.T. and Mary Lay. This was still in the possession of Mrs. Frank Lay (widowed daughter-in-law of H.N. Lay) in 1958. Other materials from this "collection" are cited as "FL."

Tradescant (b. August 4, 1834)¹⁵ were enrolled in Mill Hill School, Middlesex, in June, 1841. A dual purpose was served

15. Despite the clear evidence in the Family Bible (per note 14) and other positive evidence to be cited, both the Lay family and scholars on Lay have overlooked this son of G.T. Lay. A.C.H. Lay "Four Generations in China, Japan and Korea" (Edinburgh 1952) p.xiii and p.13, considers only four sons of G.T. Lay, the elder. The author, in a private letter of February 20, 1957, wrote "No, I can shed no light on any G.T. Lay II, and did not know that George Tradescant Lay had five sons". It is also apparent that the sketch facing p.14 of "The Three Cherubs" should identify them as George Tradescant Lay [II], Horatio Nelson Lay and William Hyde Lay. The difference in age between the eldest boy (presumably Horatio Nelson) and the youngest, if it were Walter Thurlow, should be a difference of about eight years. It seems fairly evident that there is not this much difference in age between the eldest and the youngest boys represented in the sketch.

J.K. Fairbank, "The Definition of the Foreign Inspectors' Status (1854-1855)...." "Nankai Social and Economic Quarterly" (Tientsin) Vol.IX, No. 1 (April 1936) (Hereafter cited as Fairbank, "NSEQ") p. 138, refers to H.N. Lay as "one of four sons of Consul G. Tradescant Lay". Listed in note 36 as H.N., W.H., W.T., and Amoy. Another twist is given to the problem by S.F. Wright, "Hart" who, in his biographical note on H.N. Lay (note 75, p. 121), wrote that he had four sons and one daughter. Wright's sketch, in fact, contains numerous errors of chronology and fact.

That there was a G.T. Lay [II] has some significance in relation to one facet of H.N. Lay's character. Vide *postea*, Ch. IX.

by this step as it relieved his pregnant wife,¹⁶ Mary (née Nelson)¹⁷ who was left with only the two younger boys, William Hyde (b. March 29, 1836) and Walter Thurlow (b. April 18, 1840) to care for.

The career of G. Tradescant Lay in the China Service from 1841 until his death at his post as H.B.M. Consul at Amoy on November 6, 1845, is deserving of a monograph in its own right.¹⁸ However, because of the physical separation between himself and his eldest son, and because that son was too young to grasp the

16. G.T. Lay's only daughter, Angelina, was born November 25, 1841, almost four months after he had left to join Pottinger's mission.

17. According to family tradition, Mary Lay claimed collateral descent from the family of Admiral Lord Nelson: John King, K.C. "Horatio Nelson Lay, C.B." "Journal of the American Asiatic Association" (New York) Vol. XIV, No. 2 (March 1914) p.49; A.C.H. Lay "Four Generations", p.5, H.M. Lay to his son John L. Lay, ms. April 2, 1939, "My sister Elsie tells me my father's mother, Mary Nelson was a relative of the family of Lord Nelson. I think she said she was a niece of his brother. My father never said anything about it but as there has always been a tradition in the family that there was a relationship there probably was some foundation for it. As a boy I remember visiting my grandmother [Mary N. Lay] in King's Lynn not far from where Nelson's family lived. I met her brother a merchant in Lynn who was named Horatio Nelson. My grandmother who married George Tradescant Lay afterwards Consul at Canton & Amoy called her eldest son Horatio Nelson."

18. Fairbank, "Trade", Ch. VII, passim, touches on several aspects of his Consular career. G.T. Lay's interests and activities extended much beyond his immediate official responsibilities - in part attested to by the variety of entries associated with his name in H. Cordier's "Bibliothéca Sinica" 5 vols. (Paris, 1904-1924).

implications of trade relations and diplomacy,¹⁹ little of historical value would be gained by attempting to establish a relationship between the respective careers of father and son. Nonetheless, one aspect of his career, which might have a direct bearing on such a relationship, is worth examining. This has to do with the judgment that prevails concerning G.T. Lay's personality.

The judgment that seems to prevail is reflected by Fairbank who asserts that he was a mild and retiring man who "proved incapable of pounding the tables of the mandarins."²⁰ It is natural to contrast this mildness with the "agresive [sic] energy" of the son²¹ and to seek to reconcile this contrast.

It is not necessary to go beyond Fairbank to do this. In other passages in his study on coastal trade and diplomacy, he produces evidence that discloses that G.T. Lay could be energetically aggressive when circumstances dictated such a course. Thus Lay was adamant in his refusal to permit the employment of Cantonese in his

19. J.K. Fairbank (apparently on a lead found in King, op.cit. p.45) located a series of 9 letters, in mss., from G.T. Lay addressed to his son, H.N., written between June 20, 1842 and September 20, 1845, "Trade" Vol.II, p.18, note 30. The present writer initially had access to a set of typescripts through the courtesy of Admiral H. Nelson Lay II, RCN (Retired), but subsequently examined the mss. through the courtesy of Mr. John L. Lay, Pickering, Ontario. (Hereafter cited as JLL).

20. Fairbank, "Trade", I, p.162

21. As was done by Fairbank in his earlier study, "NSEQ" op.cit. p. 138.

consulate at Foochow²² and, ultimately, he was "pounding the table" to acquire suitable quarters for the Consulate.²³ The day of "gunboat diplomacy" at every treaty port had not yet arrived.

While other evidence could be mustered to demonstrate that the prevailing judgment of Lay's personality is unsound,²⁴ there is positive evidence to indicate that, to the extent that his behaviour was conciliatory, he was at least acting in conformity with official British policy. On the one hand, the general policy for the behaviour of British Officials towards the Chinese up to the opening of hostilities in 1839, was set by the Royal Sign Manual of December 31, 1833. According to Morse, "the spirit pervading the whole was one of conciliating the Chinese in every way."²⁵ On the other hand, specific instructions issued to G. Tradescant Lay by Lord

22. Fairbank, "Trade", I, p.220, note g., citing "China Mail," February 20, 1845.

23. "Ibid." pp. 203-204. The fact that Lay and his more aggressive successor, R.B. Alcock, were unable to gain satisfaction on this point merely emphasizes the degree of Chinese resistance. On this, Morse "Conflict", pp. 361-362, is also relevant.

24. The criticisms of Lay stemmed from a specialized group of critics who were dissatisfied with his initial policies in opening the Port of Foochow. These included the merchant publishers of the Hongkong Press (the "China Mail" and the "Friend of China"), the "Old China Hand" incumbent Superintendent of Trade, Sir J.F. Davis, and the "mavericks" Rutherford B. Alcock and Harry S. Parkes.

25. Morse, "Conflict", p. 120

Aberdeen, at the time Secretary of State for Foreign Affairs, when confirming Lay's appointment as Consul at Amoy, contained the following paragraphs:

Under these circumstances I have a few words to say to you of a general nature; and those relate principally to your dealings with the Chinese Authorities and People. Temper and discretion are, above all things, requisite in this respect. You will avoid as much as possible all irritating discussion, and endeavour by mild and courteous demeanour to influence those persons with whom you may be brought in contact. You will steadily maintain the rights and privileges of British Subjects, and their lawful Commerce, but you will do so most effectually by cultivating a good understanding with the local authorities. In any discussions of a disagreeable character which may unfortunately arise, you will have the advantage of suspending them, at least for a time, on the ground that you will refer the matter to the Chief Superintendent, and it can scarcely be doubted that in most cases an intimation to that effect will have a salutary influence on those with whom you may have come into collision.

You will discountenance and repress to the utmost of your ability, any proceedings of British Subjects calculated to give umbrage to the Chinese Authorities or People. Very extensive powers will, in all probability be entrusted to you, under the authority vested by Parliament in the Queen, and by her Majesty in the Chief Superintendent, for the government and control of British Subjects within your Jurisdiction. I trust that you will exercise those powers with moderation, though with firmness; and it will be fit that you should bear in mind that, on all occasions where differences can be adjusted in a conciliatory manner, it will be much more consonant with the spirit by which Her Majesty's Government would wish to see the whole British Community in China animated, that such differences should be adjusted by amicable arrangement rather than by any formal legal process. Indeed it cannot be doubted that the national reputation will be exalted in the estimation of the Chinese in proportion to the degree of harmony which may pervade the British Community, and therefore you will promote such a feeling to the utmost of your ability.²⁶

26. FL ms. Aberdeen to Lay, June 3, 1844

A conciliatory attitude, it is true, was not incompatible with Lay's inclinations.²⁷ He was a well-educated gentleman, diligent and persevering in fulfilling his responsibilities and forceful in pursuing what he understood to be matters of principle^{le}. In his letters he sought constantly to impress on his son the desirability of these qualities. They did come to form a part of H.N. Lay's personality, but in his case, they were not supplemented by the same depth of learning and maturity that were to be found in his father.

In the China environment of the early 1840's, G.T. Lay was almost unique among his compatriots engaged in trade and diplomacy. Obviously not aware of his impending death he complained, almost

27. JLL mss. G.T. to H.N. Lay, Wusung River, 24 June 1842: "I am not anxious that you should learn to fight, dear boy, since it is far more noble to forgive an injury, than it is to resent it. A willingness to forget and forgive ranks among the most charming attributes of the Deity." Hongkong, June 14, 1843: "Men forsake their lewd and profane courses, but they do not leave off their hypocrisy. Therefore, dear boy, hate hypocrisy; have you done wrong confess it. And while your heart is wrong never fill your mouth with fair speeches." Canton, 26 November 1843: "I must express a wish that you will always strive to please by courtesy, by kindness and above all, by forbearance. The great apostle said 'I please all men in all things'. And you may well take a hint from his example. It will save you from an unspeakable amount of sorrow and self-reproach....."

bitterly, in July, 1845:

There is a little religion and a little science at home, but here people come to get money and to wear away the time as fast as they can. It would be great delight to me to see you with a relish for something apart from the pleasures of eating, drinking, sleeping, riding, boating and what is significantly called, "talking nonsense". Here if a subject is started that has a little taste of learning and philosophy in it a "terrible" silence is the result, and the speaker finds himself struck dumb. I hope this will not always be the case, and that you and I shall be instrumental in bringing about a change for the better.²⁸

If a change had taken place by the time H.N. Lay reached China in 1847, it was not in the direction desired by his father. The field was dominated by the assertive, aggressive apostles of national prestige and economic "progress". It is not altogether improbable that the young Lay may have felt that he had a duty to carry, in part at least, the burden of his father's "cross".

In this one aspect, then, despite the span in distance and age, the public career of G. Tradescant Lay in the China Service may have had a direct bearing on the subsequent career of his son. In several other aspects, especially those related to family relationships and arrangements, the impact on H.N. Lay's career was direct and concrete.

Although when he left for China on the temporary assignment, G.T. Lay had apparently hoped that it would lead to a permanent post, it was almost two years before the issue was decided. He seems to

28. JLL ms. G.T. to H.N. Lay. Amoy, July 10, 1845

have had some second thoughts about his own plans, for in both mid-1842 and mid-1843, he alluded to his return to London. His hesitancy was doubtless stimulated by his susceptibility to illness and to the intense depression he felt in intellectual isolation.²⁹ By the beginning of 1843, he knew that he had been recommended for the Consul's post at Amoy,³⁰ but his letters reflect that he was seeking to overcome resistance from his family.³¹

Thus, after describing his narrow escape though wounded during the hostilities at Woosung on June 16, he comments to his son: "Your affection for China will not be increased by this circumstance I

29. Illnesses had seriously interfered with his work on previous visits to the East. Beechey, op.cit. p. 411. Also, vide antea p. 28 Fairbank "Trade", p. 168, in a footnote reproduces the complaints to be found in G.T. Lay's letters to his son from 1842-45. While, in his March 1844 letter, it is true that he recorded the fact of his "insomnia from about one to five every morning", yet the paragraph opens with the statement "I preserve a healthy appearance though my hair turns grey very fast." In his preceding letter of January 19, 1844, he wrote, "I am pretty well in health, but sometimes dull for want of dear Mamma." JLL, mss.

30. FO 17/66. Pottinger No. 4 January [16-17] 1843.

31. A statement in Fairbank "Trade" p. 168 (a précis of a portion of an uncited despatch from Lay to Davis No. 36 April 19, 1845 - FO 228/50) "Consul Lay arrived [at Amoy] on April 19, 1845 [sic] He ... had not seen his wife at Hongkong for nearly four years" might lead one to infer that Mrs. Lay had been in Hongkong for four years. This, of course, was not the case.

suppose....."³² A year later, within a single letter, his mood was vacillating.

"When you have finished your education you must come and see me, should I not be called home before that period." He entices the boy by relating how he has been able to use his influence in promoting the career of a youth of 17 who "has come here in search of a situation". However, Lay then goes on to assert that he is physically "very unwell" and has, "entirely lost all.... taste for study and even the Bible which I was wont to delight in, cannot concentrate my wandering thoughts, or fill my poor sad heart with that interest which was once so fresh and flowing."³³

These thoughts seem to have stimulated his indecision:

You will find your dear Mother very uneasy, and I suppose you will strive to comfort her by saying that you do not believe I shall ever come again [to China?]. We cannot tell what shall be, nor how soon I may find myself at Burton Street. But as I should, in such a case, be out of conceit with everything, I fear our meeting would have but little joy in it. I used to refresh myself with the picture of meeting you and dear Mamma at Burton Street, but the picture is now out of sight, and I feel a loss which I cannot describe.³⁴

This period of indecision and despair on G.T. Lay's part, gradually gave way to one in which he made increasingly positive and decisive plans. Evidence of the change may be found in his letter written just over five months later. He writes about the Consulate

32. JLL, mss. G.T. to H.N. Lay, Wusung, June 24, 1842

33. Ibid. Hong-Kong June 16, 1843

34. Loc.cit.

being constructed in Canton and adds:

I have just seen a room, parted off by my direction which would suit you exactly.... a balcony in front where you might take exercise as long as you please It would do me good to see you dear boy, I want somebody to make me well. For though I enjoy this honourable post, have overcome the mountain of difficulties which at first lay before me, and have [assistants] in abundance all ready to attend to my wishes, yet I cannot at all times enjoy the comforts that God is so kind to give me, first because I have not your dear Mother by me, and secondly because I am seldom without some pain or disagreeable sensation.³⁵

Barely two months later, there is no question about his wishes:

Still I never think of having [your Mother] with me, without remembering yours and your dear brother's [sic³⁶] loss, when she is removed from the midst of you. This China must be your home as well as mine. Here is a fine country, people ready to shew you much attention and an employment both honourable and profitable.³⁷

35. Ibid. Canton, November 26, 1843

36. The three eldest boys, H.N., G.T. and W.H. remained in England. The two youngest children, W.T. and Angelina, accompanied Mrs. Lay to China.

37. JLL, ms. G.T. to H.N. Lay, Canton January 19, 1844. Lay was over-optimistic about the profitableness of the employment. While Consul at Canton (23/7/43 - 30/6/44) he received salary at the rate of £1,800. At Foochow from July 1 to September 30, the annual rate was £1,500, but from October 1, 1844, it was reduced to £1,200 because of lack of trading activity at that port. Although the salary proposed for Amoy was £1,500 (Fairbank "Trade" p.167) Lay remained at £1,200. Information in summary tables in FO 228/41. In addition, in despatches from Foochow (FO 228/41 Lay's No. 1 22/6/44 and No. 21, 10/12/44) and Amoy (FO 228/50 Lay's No. 34 19/4/45) Lay complained both of the inadequacy of the salary and the heavy losses arising from commissions and disparities in exchange. At Amoy, he appealed for a salary increase in view of the potential trade at that port. FO 228/50 No. 36, 19/4/45.

A passage in the same letter suggests that he had offered his wife the opportunity to decide: "Should dear Mamma do me the honour to come to Canton, I will shew her the same mark of respect [of putting on his official 'undress coat and waistcoat']"

Whatever she may have replied to him (based on an inquiry of an earlier letter because the letter of January 19 did not reach London until April 5³⁸), by the end of March 1844, the nine months in virtual isolation at Foochow and the prospect of a similar future at Amoy, led him to an even firmer decision. "You know I have sent for dear Mamma, for I am not happy without her."³⁹ Finally, the decision is unequivocal. He closes his letter of June 16, 1844, with the following: "I hope dear Mamma is about starting, therefore do not write. I do not intend to part with her."⁴⁰

These developments of necessity focus attention on the feelings and behaviour of G.T. Lay. As no correspondence from members of the family to China has been located,⁴¹ it is only possible to draw tentative inferences from the material that is available about the reaction of H.N. Lay to these developments.

38. The cover of the letter bears the London postmark of this date.

39. JLL, ms. G.T. to H.N. Lay, Canton March 25, 1844.

40. Ibid. The letter did arrive in London, 16 September, presumably after Mrs. Lay had left.

41. There are frequent references in G.T. Lay's letter to information and reports received by him. There is also a reference (JLL, ms. G.T. to H.N. Lay, March 25, 1844) to a letter received from his son dated October 28, 1843.

In the first place, the suggestion has been made that the idea that he was to spend his future in China did not take hold in the young boy's mind. At the same time, in increasingly stronger terms, G.T. Lay expressed his desire that his son should join him and seek a career in China. The letters from May, 1845 - those after Mrs. Lay had rejoined her husband at Amoy - assumed the boys would rejoin their parents in China. The original plan appeared to be that H.N. Lay was to travel out in 1846. However, on July 10, 1845, G.T. Lay wrote:

We hear that Willie is unwell and so dear Mamma anxious about him begins to think of sending for him soon. In that case George & you might come out together, deducting one year from his stay and adding one to yours.⁴²

If the boy had been won over by the idea that he would soon be going out to China, this news of a probable delay might well have had an unsettling effect upon him.

Secondly, although there is a constant stream of general counsel and advice that flows through almost all the letters, the references in the later ones point to specific patterns of behaviour, between late 1844 and early 1845, that were apparently getting the youngster into difficulties at school.

I hear from your dear Mother that you work hard at school and am right glad to see three testimonials of your success. I hope you enjoy sometimes the charms of religious worship, and behold the finer beauties of God's temple. I do not forget that there are not a few hindrances to piety at a

42. JLL, ms. Amoy.

public school, and that to imitate him who left us an example, ["vrogsammos" - in Greek script], is not easy anywhere.⁴³

and again:

I often pray that God would plant his love in your heart, and keep you from the plague of a fretful temper and the seducement to evil which are ever starting up around you. Keep company with such lads as seem to have a certain raciness [?], judgment and sobriety in their talk and doings. Think little of advice that people are so fond of thrusting upon their neighbours, remembering that few are so well informed and so honest as to tell you what you ought to do. Shut your ears against the common prelude - "If I were you I would do so and so." Do nothing and say nothing for which you do not clearly see the reasons.⁴⁴

The difficulties of rebelliousness and insecurity suggested by these references might normally be found in a boy of 12-13 years of age. It would not be unusual if they were aggravated by the sense of loss which the youngster might feel at being isolated from both his parents.

In the same vein, it is also perhaps of more than passing significance that G.T. Lay acknowledges a report from his wife that the youngster's health is poorly.⁴⁵ What evidence there is gives

43. Ibid. Amoy, May 25, 1845. Received in London, 9 October 1845.

44. Ibid. G.T. to H.N. Lay, Amoy, July 10, 1845. Words under-scored as in ms.

45. Ibid. G.T. to H.N. Lay, Canton, June 16, 1844. The fact that the previous letter of March 25, 1844, had been redirected from Mill Hill School to Lynn, where it arrived on July 5, 1844, may indicate that young Lay was withdrawn from the school for the Summer Term.

a general picture of a normally healthy boy. G.T. Lay refers nostalgically to the boy "whom, in days of infancy, I often amused by taking into the fields to look at the beauties of nature."⁴⁶ H.N. Lay's eldest daughter recalled that he "went to school first to his grandfather Nelson [at Lynn], who had also horses for hunting and he learned there to ride bareback on the wildest steed."⁴⁷ His poor health, then, appeared to coincide with the decision that Mrs. Lay should leave England to join her husband in China.

Thirdly, whether because of the unsatisfactory conditions which prevailed at Foochow, or because the letters were destroyed, it is a fact that the collection of letters from father to son contain none written during G.T. Lay's entire consulship at Foochow, (July, 1844, through March, 1845) and during the first two months after his arrival at Amoy. Part of the time span (the first few months of 1845) for which there are no letters can be accounted for in view of a compound fracture which Lay sustained in one of the metacarpal bones of his right hand.⁴⁸ However, as the other letters indicate, the pressure of his public duties on earlier occasions did not prevent him from writing to his son.

46. Ibid. Canton, March 25, 1844

47. JLL, ms. Elsie Lay to H.M. Lay, October 13, 1937.

48. FO 228/50. Lay's No. 36 from Amoy, 19/4/45.

In this instance, the gap in letters corresponds closely in time with the first few months following the departure of H.N. Lay's mother for China. The correlation may be due solely to coincidence, but it may also be wondered whether the non-existence of the letters may not in some way be connected with the "plague of a fretful temper" which G.T. Lay commented upon.⁴⁹

Finally, young Lay was involved in "an escapade"⁵⁰ involving an attempt to run away from Mill Hill School. Although it is not clear exactly when the attempt was made, it is probable that it took place late in 1844 - after Mrs. Lay had left for China.

This conjecture is based on the fact that on January 30, 1844, G.T. Lay sent "a small gift" to his son, which he entrusted to a compatriot to deliver by ^{hand} and.⁵¹ The size of the folded cover

49. Vide antea p. 45 [note 44.]

50. The incident is referred to in King, op.cit. p.49. He refers to an account of it which was in a "published history of Mill Hill." I have been unable to locate this. The details cited in this study are from an extract of a letter from Norman G.B. James, St. Augustine's, Cliftonville, Margate, (who, I believe, wrote a history of Mill Hill) to Mr. H.M. Lay of Barrie, Ontario, dated April 20, 1905.

51. JLL ms. G.T. to H.N. Lay. Canton. This small and brief "note", along with the forwarding note of the compatriot, "Dr. Plimself Surgeon of Her Majesty's Sloop Childers", were not included among the copies of the nine letters sent by H.M. Lay to J.K. Fairbank. (Vide antea p.35 note 19).

(1 9/6" x 2 15/16" - an unusual size) would have been consistent with a set of "very beautiful pictures on Chinese rice paper" which the boy sold to eleven other schoolmates, in order to provide funds for the attempt.⁵² The "gift" was only delivered to H.N. Lay on September 17, 1844.⁵³

The incident may, also, account for the "lost" letters referred to previously. According to James' account, the boys who were implicated were severely punished. Among other penalties, the pictures purchased by the boys were expropriated by the Master (Mr. Priestley) and were torn up "in the presence of the school." The older boy involved in the runaway attempt was expelled. H.N. Lay "was apparently forgiven as the younger boy."⁵⁴ The failure of the venture and the destruction of the pictures would hardly, under the circumstances, have been considered adequate punishment for young Lay. He may not have been deprived of having the contents of his father's letters communicated to him, but he may have been deprived of possession of the letters.

52. JLL ms. N.G.B. James to H.M. Lay, April 20, 1905.

53. Ibid. ms. Plimsell to H.N. Lay. London: Postmark "SPI7 1844", on the cover, in pencil, "Rec'd September 17, 1844." The note begins "Dr. Plimsell sends his compliments to Master Lay and begs to acquaint him, that his father entrusted the enclosed to Dr. Plimsell's care, who would have called to see him had not Mill Hill been so far distant." G.T. Lay's note of January 30 was small enough to have been enclosed and bears no postmark.

54. Op.cit. (Vide antea p.47 note 50)

From the foregoing view of the developments involving the personal relations of G.T. Lay with his family, it would be reasonable to conclude that the question of China and his future relationship to it was not what was significant to the young boy. To the extent that the connection with China was responsible for splitting his parents, it stimulated an unfavourable reaction toward China. When the connection became so dominant as to separate him from both his parents, his main motivating force appeared to be the desire to be reunited, as quickly as possible, with his parents. The untimely death of his father led to a situation which eliminated any question of choice on the part of young Lay as far as his immediate connection with China was concerned.

Before following the course of events subsequent to G.T. Lay's death, it would be appropriate to conclude the account of the influences affecting his formative years. With respect to environmental influences, it may be noted that King's Lynn was a second home to Hampstead and Mill Hill. When G.T. Lay served with the BFBS from 1836-1839, mother and children moved to Lynn.⁵⁵ When he returned,

55. BFBS. "Home Correspondence." See letters of G.T. Lay to the committee dated May 9 and May 11, 1836, addressed from "8 Valingers Road Lynn." Letter of May 16, 1836 (written by Lay at the Society's office, 10 Earle's Ct.) addressed to "Gentlemen of the Finance Committee, I have respectfully to request that my salary may be paid into the Bank of Esdaile & Com. and that Mr. R. Nelson Lynn Norfolk be advised of the same." Mary Lay "No. 8, Valingers Road Lynn Norfolk" to Rev. A. Brandram, May 28th, 1836, "May I also beg the favor [sic] of your paying our money into Esdaile's Bank....."

Also "Minutes of the Committee" p. 380. Meeting of October 2, 1837. "Mr. R. Nelson, dated Lynn Sept. 28th stating that Mrs. Lay, had received, a short time ago, a letter from.....Lay...." Vide antea p.46 note 47.

they moved back to Hampstead.⁵⁶ In addition, the family seems to have spent the summers fairly regularly in Lynn.⁵⁷

The male members of Mrs. Lay's family at Lynn, according to earlier citations, were educated but not learned, and moderately well off, but not affluent. Her father was a townsman with gentry interests. One brother was a merchant of sufficient standing to qualify for a public post. Another brother was a clerk, probably in a bank, and in the 1840's lived in a moderately fashionable section of the town.⁵⁸ If anything were to be concluded from this, it would be that young H.N. Lay was not totally unfamiliar with attitudes related to mercantile and financial enterprise. It would be folly to press an analogy between these influences and his later activities.

On his father's side, as G.T. Lay had severed all connection with

56. FO 17/41. Lay to W.F. Strangeways, January 10, 1840, as from 34 Burton St., Burton Crescent.

57. FL. "Family Bible". G.T. Lay [II] was baptised in Lynn on Sept. 1, 1834. Also, as previously noted, JLL mss. G.T. to H.N. Lay, Canton 26/11/43. "Your Uncle Robert tells me that your conduct while at Lynn gave great pleasure to himself, Aunt and the rest of kind friends there". G.T. to H.N. Lay, Canton, Mar. 25, 1844, was re-directed to Lynn, where it arrived on July 5, 1844.

58. I drew the connection between the entry in W. White, "History, Gazetteer and Directory of Norfolk" (Sheffield 1836) and the apparent connection of R. Nelson with Esdaile's Bank.

his own family,⁵⁹ the influence was exclusively that of his father. By the standards of his day, G.T. Lay was an educated and learned man, and however unhappy his earlier years, this bespeaks a family of means. Whether it was acquired by birthright or choice, he was a convinced adherent of a non-conformist faith. This is confirmed by his connection with the BFBS and by the choice of Mill Hill School for his sons' education.⁶⁰ G.T. Lay's interests were as extensive as the range of his senses and, if his letters from China are taken as an extension of the influence he tried constantly to exert, he sought to transmit this concept of learning to his eldest son.⁶¹

During the period of young Lay's formal education, his father was particularly anxious that he should gain a sound foundation in the Latin and Greek classics in order "to make further progress without difficulty when you leave school.... that when you come we may talk

59. The only clue for his reasons is to be found in JLL ms. G.T. to H.N. Lay, Canton, Nov. 26, 1843. "When I was your age no counsellor mingled kindness and experience to direct me in the road to happiness. My elders praised or condemned me in cases where I did not deserve one nor the other, and always showed me the wrong path both by precept and example." As far as his contemporaries were concerned, he was successful in obliterating his past prior to 1825.

In conversation with the present writer, descendents have related the story that his wife never knew any more of his past than that he had been on Beechey's voyage and that when she met him (about 1829/30) he was already able to speak Chinese.

60. Mr. John L. Lay informed the writer that H.N. Lay was a Congregationalist.

61. JLL mss. G.T. to H.N. Lay, passim.

and read together now and then"⁶² and "to talk with me respecting the literature of those two nations."⁶³ He urged him to learn to speak well and fluently, to concentrate on developing a fine hand, and when out walking to

...endeavour to find entertainment by enquiry into everything that falls in your way---question the ploughman, the herdsman, the mechanic and the dealer in various merchandise, each and all can tell you something worth remembrance. What they tell you write down to help memory, and thus become knowing and intelligent in all the doctrines of that science, which men call Common Sense.⁶⁴

From hindsight, it is clear that young Lay would have been well served had he been directly subject to his father's influence for a longer period.

Apart from his brief bout with poor health and the unsuccessful "escapade", the youngster was a diligent student. The reports of his mother, relatives and tutors, as reflected in the letters, were generally favourable ones. It is not possible to determine the extent to which he may have readjusted himself a year after his mother's departure. He was again enrolled at Mill Hill for the 1845-46 session. He did not return after the Christmas Vacation. The reasons for this will be discussed shortly.

By the time he was $13\frac{1}{2}$ years of age, then, the focus for H.N. Lay's future had become China. He was being groomed to pursue a career in

62. Ibid. May 29, 1845

63. Ibid. July 10, 1845

64. Ibid. June 16, 1844. Underscoring as in ms.

his father's footsteps - presumably in the public service. He had been conditioned to apply himself assiduously to studies that would put him in good stead, once he were to become familiar with the language and environment of China.

Under the circumstances that were anticipated, he should have continued with his formal education until 1847, to the eve of his 15th birthday. With the additional education and the added years, he would probably at least have been eligible to support himself in some form of apprenticeship. The plan was seriously disrupted and radically distorted by the death of his father at Amoy.⁶⁵ The latter succumbed on November 6, 1845,⁶⁶ to an ailment variously diagnosed as "bilious" or "climatic" fever.⁶⁷

65. JLL ms. G.T. to H.N. Lay, Amoy. May 29, 1845. Lay noted that there was a heavy toll of Chinese "dying of fever". He reported to Hongkong (FO 228/50 "Separate" 21/8/45) that the fever was of epidemic proportions. He had himself withstood one attack in mid-July ((FO 228/50 No. 74 Sullivan to Davis 24/10/45 enclosing C.A. Winchester (who had been a physician before taking up a post as a junior assistant in the Consulate) Report 18/10/45)).

In what was probably his last letter to H.N. Lay, of Sept. 20, 1845, Lay wrote, "I am not always at ease, owing perhaps to that nervous uncomfortable sensation that has long troubled me."

66. There has been a tendency to place G.T. Lay's death in 1846. King. Op.cit. p.49; Wright, "Hart", p.121 n.75; Lay "Four Generations", reports both 1845 (p.7) and 1846 (p.xiii). This may have originated from the fact that the "Consular letter of Administration to Mrs. Mary Lay" signed by E.E. Sullivan and correctly dated at Amoy "23rd Feb. 1846" nonetheless erroneously states in the opening sentence that G.T. Lay "departed this life 6th day of November 1846." This ms. copy was found in the "FL" collection.

67. FO 228/50. No. 74. Winchester's report refers to "bilious". No. 78 Sullivan to Davis, 6/11/45, refers to "climatic."

Chapter III

In preparation for HBM Service in China

G.T. Lay's death was a serious enough blow. Even more serious, however, was the desperate condition in which the family was left. Impoverished is not too strong a word. The cost of maintaining three boys at boarding school; the heavy cost of the move of his wife and two youngest children to Amoy; the need for more elaborate furnishings of the Consulate, which this latter move entailed;¹ the relatively low salary of the Amoy post, coupled with the losses in exchange;² all these had served to exhaust the family's resources.

In the 1840's, it would have been inconceivable for Mrs. Lay to seek remunerative employment in China. In November, 1845, it was impossible, for she was in the seventh month of pregnancy.³ This factor intensified the economic burden, for she was forced to remain in China without a sustaining source of income for a longer period than might otherwise have been necessary.

1. JLL ms. G.T. to H.N. Lay. Amoy Sept. 20, 1845. "The Drawing and Dining Rooms look well, that is they wear the air & manner of home, as they have the benefit of some furniture dear Mamma ordered at Hong Kong....."

2. Vide antea, Ch.II, p. 42 n.37

3. Amoy Lay, her last child, was born in Amoy, January 22, 1846.

Thus the combination of the news of his father's death, which only reached London about mid-January, 1846,⁴ and the impoverishment of the family,⁵ account for the withdrawal of the three boys from Mill Hill School after the Christmas term of 1845. Where they resided until the return of their mother is not, at present known.

Apart from all the other considerations enumerated, the blow must have been a devastating one for Mrs. Lay in another connection. It may also account for the irresistible determination which she subsequently demonstrated in sending her sons to China.⁶ Mrs. Lay apparently "found" herself, particularly when she settled down at Amoy. Shortly after her arrival in May, 1845, she was "well and happy. Time that works decay in most sublunary[?] things seem to have had an adverse effect in her case, for I never saw her look

4. "Times", Jan. 20, 1846. p.3, d. "The death of Mr. Ley [sic], the English Consul at Amoy, is mentioned in terms of great regret." (The "Times" frequently, and other sources occasionally, used the erroneous spelling).

5. That the impoverishment was not merely a condition related to the family's position in China, is confirmed by the document assigning Mrs. Lay as Administratrix of G.T. Lay's estate in March, 1847. The fee for registering the assignment, paid 19/3/47, was £8. On the flap of the document the following appears, "The sum of six pounds 18/6 has been returned on the ground of debts [illegible signature] Hamp. Office June 1847." FL collection. FO 17/119, Sir H. Pottinger Memo to FO, 27/11/46. "Mrs. Lay....has come home with seven[sic] children. She is in absolute penury, and at present supported by her Brothers."

6. All five of them eventually started their vocational careers in East Asia.

more fresh, nor her heart more cheerful."⁷ In July, though she suffered from prickly heat, she was "more happy when with me and more cheerful than I ever had the pleasure of seeing her before."⁸ By the end of September, just prior to G.T. Lay's fatal illness, she was

very happy and has enjoyed good health. I never saw her so much at home in Society as now, her deafness is not increased, perhaps less on account of that cheerfulness she feels and that desire to join in the conversation of the company. She looks remarkably well and would be complete could she see her dear boys now and then.⁹

There was no alternative, however, but to return to England.

She remained in Amoy until her infant son was about seven weeks old.¹⁰ Assisted by private subscription,¹¹ and the defrayment of return travel costs by the Government,¹² Mrs. Lay and the three

7. JLL ms. G.T. to H.N. Lay, May 29.

8. Ibid. July 10.

9. Ibid. Sept. 20.

10. "The China Mail", Vol. II, No. 57, p.20, 19/3/46. Reports the arrival of Mrs. Lay on March 17 at Hongkong, from Amoy.

11. Fairbank "Trade", p. 170.

12. FO 17/119. Unsigned memo prepared about Dec. 10, 1846. "Mrs. Lay's passage home was defrayed by the Public." F.O. 17/193 No. 130. Bowring to Malmesbury. Oct. 1, 1852. Bowring transmits request of Mrs. Sullivan, widow of the late Consul at Amoy, that £120 passage money be allowed as "in the cases of Mrs. Lay and Mrs. Layton, both of whose husbands died at Amoy while engaged as H.M. Consuls at that Port."

youngest children reached England in late Summer or early Fall of 1846.¹³ Mrs. Lay let little time elapse before impressing herself and her wishes on the Foreign Office in London.

On November 16, 1846, she wrote to Lord Palmerston,

I beg to present to your Lordship my sincere and grateful thanks for the favor¹⁴ [sic] received this day through Mr. [E.J.] Stanley from your kindness My Lord, I shall be enabled immediately to sent [sic] out my two eldest son's [sic], if you My Lord would kindly recommend the elder one to the notice of Sir John Davis I am sure he would when a vacancy occurred and he thought him eligible grant him something. I regret that the youthful ages of my children will prevent my receiving any benefit from their exertions for the present.¹⁵

Palmerston had initialled "Recommend accordingly" which was followed by "NB The eldest boy is under 15, the second under 13 years of age". Mrs. Lay was notified that the recommendation would be sent:¹⁶ "but Lord Palmerston thinks it right to point out

13. FO 17/119 [No. 245] Mrs. Mary Lay to H.U. Addington, Esq. (on black-bordered paper) Oct. 24, 1846. From London acknowledging receipt of the China Medal for her husband's services with the Pottinger Mission. A curious sidelight connected with this matter is that in July, 1846, the F.O. struck the name of J.R. Morrison from the list of those entitled to the medal, (which lists "G.T. Ley") because he was dead (1843), but Lay's name was left on! (FO 17/118 July-August, 1846).

14. FO 17/119. Memo as per n. 12 above. Lord Palmerston authorised a grant of £300 out of "S[pecial]. F[unds]." It was probably not foreseen that she would use her meagre resources for the purpose she obviously had in mind.

15. FO 17/119 [No. 252].

16. FO 17/108 [No. 186]. "Separate" to Sir John Davis Nov. 18, 1846. The recommendation was sent, leaving Sir John discretionary power. The following phrase is significant, "... Mrs. Lay... proposes to send out to China her two sons, aged respectively under 15, and under 13 years..." The sons referred to, the ones actually sent under this recommendation, were H.N. Lay and G.T. Lay. Vide, postea, p. 6/ n. 28.

to you, before you take the serious step of sending the boys to China that it is very unlikely, considering their youth, that Sir John Davis will be able to be of any assistance to them at all events for some time to come".¹⁷

Mrs. Lay was undeterred, probably because she knew that Harry S. Parkes, under the energetic sponsorship of Dr. Charles Gützlaff, had been taken into the China Service before reaching the age of $13\frac{1}{2}$ ¹⁸ and at $14\frac{1}{2}$ was "salaried";¹⁹ because she had pre-arranged that H.N. Lay, at least, would be taken into Gützlaff's family and would receive tuition in Chinese if he were sent out;²⁰ because she had probably been informed by Sir Henry Pottinger that he was going to advocate the initiation of a programme of student interpreterships for the China Service.²¹

Mrs. Lay not only solicited the support of Lord Palmerston directly, but she pressed her case on him through Sir G. Staunton, as well as through Sir Henry Pottinger. In a personal interview at the

17. FO 17/119 [No. 188]. Draft to Mrs. Lay, No. 18, 1846.

18. Stanley Lane-Poole, "The Life of Sir Harry Parkes" 2 Vols. (London 1894) Vol.I, p.14. The major portion of the data used to draw parallels between the early China careers of H.S. Parkes and H.N. Lay is taken from Chs.I-VIII of this biography.

19. Ibid. p.54.

20. FO 17/119. In Pottinger's memo of 29/11/46.

21. Loc.cit. Pottinger's memo closes, after a strong appeal for consideration for H.N. Lay and for Mrs. Lay, with a strong statement in support of such a policy.

Foreign Office between December 10-13, Sir George, among other points, adverted to Mrs. Lay and was informed of what had been done for her.²²

Mary Lay, however, had obviously not been a Consul's wife long enough.

On December 14, 1846, Sir George wrote formally to Lord Palmerston:

Since I had the honour of seeing you, Mrs. Lay has called on me, and entreats me to submit to you that Sir Henry Pottinger, previous to his embarkation for the Cape, had promised to speak to you in favor [sic] of her eldest son a boy of 13 or 14, going out to China in February to be placed there as a pupil to Mr. Gutzlaff. She seemed to entertain a hope that some allowance might be made to Mr. Gutzlaff for his maintenance as a pupil, with an understanding that he should have an appointment as soon as his age and qualifications permitted.²³

In reply, Palmerston indicated that he felt he had done as much as possible. He suggested that the idea of training interpreters was under advisement by the Foreign Office, but in any case were the policy to be adopted candidates selected would have to be older and more advanced in training than young Lay to justify the risk involved. Reflecting a resentment that had recently been expressed in an inter-office memo,²⁴ Palmerston added, "Besides, much embarrassment would be

22. FO 17/119. Office memo. Dec. 10, 1846, reporting desire of Sir G. Staunton for an interview to discuss various points relating to problems of hardship cases growing out of the China Service. Followed by Office Memo. supplying information on the points to be discussed.

23. Ibid. [No. 283]

24. Ibid. At the conclusion of the information memo cited in n.22, the unidentified writer (possibly E. Hammond) complained about Sir George's continued requests for generous treatment of people with short service on the China Establishment. Like the faithful son in the parable, he wanted to know what special treatment was to be accorded to people with long service?

occasioned to the Secretary to State by establishing a precedent for educating at the public expense the younger children of deceased Consuls".²⁵

As far as Mrs. Lay was concerned, but unbeknown to her, the discussion was conclusively terminated when the office staff got around to considering the memorandum which had been prepared by Sir H. Pottinger on November 27. The advisory memorandum begins, "Mrs. Lay's case having already been disposed of in communication with Sir George Staunton...", attention can be directed to the question of providing an adequate supply of interpreters. The policy of establishing a number of Supernumeraries under the Superintendency at Hongkong is recommended, but discretionary power is to reside with Sir John Davis. The report was approved by Palmerston on January 4, 1847,²⁶ and the despatch embodying the recommendations was prepared on January 16.²⁷

Mrs. Lay had not achieved her immediate objectives, but to the extent that discretionary power was left to the Superintendent and he would be dependent upon his Chinese Secretary, Gützlaff, young Lay would be favourably placed. Whether or not she realised the

25. Ibid. [No. 216?] to Sir G. Staunton, Dec. 16, 1846.

26. FO 17/119. Memo of 30/12/46 on Sir H. Pottinger's Memo of 27/11/46 with notation by Palmerston as indicated.

27. FO 17/121. No.9 Draft to Sir J.F. Davis.

situation, she did not long hesitate in sending off the two eldest boys. They left London on March 12, and arrived at Hongkong on July 29, 1847,²⁸ two days after H.N. Lay's fifteenth birthday.

There is a complete gap in documentation for information about Lay for the 19 months between the date of his arrival at Hongkong and March 1849. The first direct impressions which "China" might have had upon him may be reconstructed from acquaintance with his physical environment, from the state of affairs respecting foreign intercourse with the Chinese at the time, and with the earlier activities of Harry S. Parkes, when he first arrived in China at the age of thirteen and a half.²⁹

From the standpoint of natural setting, Hongkong, though topographically rugged, possessed many attractions. The area, however, had only come under British control in 1841. Largely because of this circumstance, there were numerous disadvantages to living in the area. Accommodations whether in residential or working quarters were, with

28. "The China Mail", Vol.III No. 129, Aug. 5, 1847, p.100 lists among the arrivals "Messrs. H. and G. Lay." The "Overland Friend of China" No. 25, Aug. 25, 1847, p.114, confirms the arrivals but does not differentiate the two boys.

29. The general discussion on these topics is based on the following: environment and state of affairs; Fairbank, "Trade", Chs,x and xv; Morse, "Conflict", Chs XI to XV, and E.J. Eitel, "Europe in China" (London, 1895), Chs. x, xiii-xv; environment and personal activities; Lane-Poole I. chs. I-IV.

few exceptions, of the crudest sort and were intermittently destroyed by natural disasters (particularly typhoons) or by fire. Because of the elementary state of medical knowledge and of undeveloped public sanitation, epidemics of malaria, dysentery and unidentified tropical fevers were frequent and unpredictable.

Despite the wave of optimism which had originally been felt concerning the development of Hongkong as a trade emporium, in the late 1840's, it was little more than the hub of British diplomatic and military administration in East Asia. This, in turn, was doubtless a significant factor in creating and exacerbating a deep cleavage within the foreign community, setting the "Government" and most of its various agencies and officers against the rest.

Another factor that intensified the tension growing out of conflicts of interest among the parties was that the resident foreign community (including all Europeans, Americans and Parsees) could not have numbered much above four hundred.³⁰

The "Foreign complex" of the period should, however, be defined to include some of the sections of the military establishment and in some respects the communities of Canton and Macao. In this period

30. Morse, "Conflict", p.346, gives the foreign adult male population in 1850 as 404. "Census" figures do not usually include the military contingents based or regularly stationed at Hongkong. Since the officers, at least, were an integral part of the Colony's society, figures of this sort can be misleading.

regular and fairly frequent transport and communication were developed between the Colony and these two cities.

On the native side, there may have been several tens of thousands of Chinese distributed throughout the territory, the majority of them scattered in a number of small villages or living on the "junks" and "sampans" which have been common on the Chinese waterways for centuries. In this setting and among this population there was little that reflected the range of Confucian "culturism". On the one hand, while there appears to have been a few literati-type Chinese attracted to the foreign community and, in the early period, a few minor officials assigned by the Ch'ing Authorities to exercise jurisdiction over the native population, the combined total would not have been significantly prominent. On the other hand, the nature of the terrain and coastline, the temptations of the foreigners' cupidity and wealth and the absence of effective forces for policing land or water, drew to Hongkong a considerable number of refugee criminals from the mainland and opportunists eager to exploit the opportunities for racketeering, smuggling and piracy. The Colony was predominantly "Chinese" but it was hardly typical.

This superficial sketch of some of the prevailing features of the environment encountered by Lay on his first direct contact with "China" does not do justice to the multiplicity of influences which would certainly have impressed themselves upon him. They have been selected in order to draw attention to attitude-forming factors which should be

taken into account if an adequate understanding of his later career is to be formed. Although in his first eighteen months Lay must have visited Macao and probably visited Canton, his daily life proceeded within an extremely limited social and cultural milieu. In the foreign community, his minority, both literally and figuratively, would have augmented a sense of isolation and encouraged a development of self-reliance which he had already been counselled by his father to expect. Insofar as he was in contact with a Chinese community in this impressionable period, his attitudes were conditioned by association with subservient servants and by observation of the activities and behaviour of the least sophisticated strata of the indigenous society. It was, in fact, to be several years before Lay was to have an opportunity to acquire more than a superficial knowledge of his new environment.

Part of the reason for this delay can doubtless be ascribed to his age and corresponding insignificance. To a greater extent, however, deterioration in the relations between foreigners and Chinese - apart from Shanghai - was reactivating resentments among the "Old China Hands" and creating antipathies among the newcomers, like Lay. The incompatibility of the institutional and cultural systems had not been reconciled by the war nor by the treaties that followed. There had been a brief "honeymoon" as an aftermath to the "shotgun" wedding, but disengagement succeeded by virtual separation (particularly on the diplomatic level) was the trend even before Lay arrived in the Summer

of 1847.

During the months that followed his arrival, Hongkong was the focal point for the release of the frustrated hopes of the trading interests and for the storing up of unrectified insults (real and imagined) experienced by the officials at the various Treaty ports.

As far as is known,³¹ H.N. Lay was not connected with the Establishment but, living in the home of Dr. Gützlaff who was Chinese Secretary, he could hardly help but be involved in it. To the extent then, that the Establishment and most of the rest of the foreign community that was concerned to engage in legitimate intercourse with the Chinese (whose number in Hongkong, apparently, was not large) were isolated, to that extent were Lay's knowledge and understanding stultified.

In this respect the parallel between H.N. Lay's early career in China with that of H.S. Parkes, does not hold good. Parkes arrived in China in October 1841,³² during a lull in the war. When large-scale operations were resumed the following Spring, though he had been studying the language for barely six months, he was pressed into

31. It is conceivable that, like Parkes, young Lay might have been given simple clerical duties to perform in the Establishment, for which he would have received extremely modest remuneration. At this level, personnel were not listed individually.

32. Lane-Poole, I, p.14. As indicated in n.29, virtually all the information about Parkes has been taken from this biography.

service. In this initial period he had considerable opportunity to gain firsthand familiarity with a portion of the coastal and riparian regions of the Central and Southern mainland. This contrast in the conditions under which first impressions of China were gained by these two youths does not appear very profound, but it may have some relevance to the contrast in their subsequent careers.

In several other respects, however, the activities of Lay and Parkes in their initial contacts with China were quite similar. The basis of similarity derives from the fact that both were, in effect, wards of Dr. Charles Gützlaff; that they lived in his home for an extended period of time and received from him the major portion of their early tuition in the Chinese language.

Gützlaff was a native of Pomerania who had originally journeyed to Southeast Asia as a Protestant missionary in the 1820's. He had ultimately gravitated to South China where he became closely connected with the English community - emphasised by his marriage, successively, to three English women. From 1837 until his death in 1851, he was on the staff of the Superintendency. He had a high opinion of his own capabilities as a linguist and sinologue, which was not universally shared by his contemporaries, but it could not be denied that he was able to communicate effectively with the Chinese. Lane-Poole, who is sharp in his criticisms of the man, nonetheless notes: "He knew the Chinese people intimately - perhaps better than any other man of these

early days...."³³

Whether because of his overbearing attitude or because of the force of the example of his own aggressive and energetic efforts, his students applied themselves assiduously to their linguistic studies. Gützlaff apparently had little time to devote to formal tuition and while he would strive to carry out a programme of daily exercises, the pressure of Gützlaff's commitments meant that the student was left to rely, for much of the time, on his own resources.

If Parkes' experience can be taken as an example, conditions in the evangelical missionary home were not conducive to the pursuit of other studies. One of the firm hopes of G.T. Lay for his son would thus seem to have been thwarted. Not only had the boy been forced to discontinue his formal education in England before he had become self-reliant in classical and scientific spheres of learning, but the opportunities open to him in Hongkong for developing these spheres were virtually non-existent.

In view of the dependent status of these wards of Gützlaff, the incentive for them was to acquire a workable knowledge of Chinese as rapidly as possible. Other interests of spheres of learning were excluded by their economic circumstances.

There is, of course, a considerable temptation to fabricate an account of the personal influences which must have been impressed upon

33. Ibid. pp.55-56.

Lay as a result of his association with the Gützlauff family. The information available on Parkes' experience might serve as a guide. But while it may be acceptable to find parallels in some of the experiences, personal relations are affected by too many sensitive zones of subjective evaluation. Five years separated the experience of Parkes and Lay. The youths were quite different in temperament and character and this would, presumably, have elicited quite different approaches from their foster-parents.

While the information on Lay is scarce for this period, there is a lengthy "memorandum", prepared by his "guardian",³⁴ for the young man's guidance as he was about to launch himself on his public career.

Although it is neither basically concerned with Lay's rôle in the British community, nor with intercourse with China, the memorandum is presented in its entirety as appendix I.

The memo discloses that Lay, apparently on his own initiative, had applied and been accepted for the position of interpreter to accompany a United States' "mission" authorised to proceed to Japan to seek to persuade the Japanese to adopt a more favourable policy with

34. FL ms. The manuscript is a copy in Lay's handwriting, the copy bearing neither a signature nor a designation as to who the "Guardian" is. There can be little question, however, that the original was written by Gützlauff. Vide Appendix I.

respect to U.S. vessels plying the northwest Pacific.³⁵ Its principal interest for this discussion is that it gives evidence of the tuition - apart from language-training - that Lay's "guardian" (undoubtedly Gützlauff) sought to impart.

The counsel is heavy with the burdens of responsibility which the young man, several months short of his seventeenth birthday, was assuming. The religious emphasis, not unexpectedly, was primary. Lay was reminded of his obligations "as the eldest son of [his] widowed mother". He was abjured to take as his example his great ancestor (Horatio, Lord Nelson ?), who "was never a protégé, but rose to the highest honours by individual exertions." He was made to feel that his "whole life may be humanly said to hinge on [his] conduct" during this one opportunity.

The "guardian" followed with a lengthy discourse on the functions and methods appropriate to interpreters and on the conditions which Lay could anticipate in his dealings with Japanese "Mandarins". One passage of advice, near the conclusion, trite as it may seem, would

35. The expedition referred to here is that of Capt. J. Glynn, authorised by the officials on the spot, with the primary object of recovering seamen from the U.S. whaler "Lagoda." The vessel had been wrecked in the Japan Sea in Feb. 1848, and the survivors had been incarcerated by the Japanese. Cf. Tyler Dennett "Americans in Eastern Asia" (Reprint, New York 1941) p.251. There is evidence that the expedition also recovered some American seamen who had survived the shipwreck of the whaler "Lawrence" in 1846. Cf. King, op.cit. p.49; H. Cordier, "Histoire générale de la Chine" (Paris 1920) IV, p.135

probably have but confirmed the young man's experience to date.

Whenever public duty calls you do not eschew dangers. Never be disheartened, but always cherish courage, for how ill matters may look at the beginning, success will be awarded to the judicious and persevering.

Whatever contribution Lay may have made to the limited success of the expedition, he did not have cause to "repine in vain".³⁶ When he returned, some weeks later, he obviously considered himself sufficiently qualified to set an independent course. The decision may have been influenced by the fact that Gützlaff's second wife died during Lay's absence. Conditions were appropriate for a complete break.

In any event, Lay appears to have taken a qualifying examination for entry into the Superintendency in May 1849.³⁷ On the 30th May 1849, Mr. A.R. Johnston, Sir J.F. Davis' Secretary, wrote the following letter to Gützlaff:

I am directed to acknowledge receipt of your letter respecting Mr. Horatio Nelson Lay, son of the late Mr. Consul Lay, and to inform you that His Excellency....in consideration of the progress already made by that young gentleman in the study of the Chinese language, will recommend to the Right

36. The mission did not proceed beyond Nagasaki and the objectives other than recovery of the seamen became the basic objectives of Perry's mission of 1853-54. Dennett, op.cit. p.251 ff.

37. FL ms. There is a document in this collection which is a translation of an undated edict entitled "A fresh warning against opium". The document bears the legend "Translated May 1849 [signed] Horatio N. Lay." Unless it had the significance suggested above, there would seem little point in his having preserved this particular sample of his work.

Honorable [sic] Viscount Palmerston, that he should be placed on the establishment of Supernumerary Interpreter, on the 1st of June next, on an allowance of £150 a year.³⁸

Lay was not officially notified of the confirmation of his appointment until December 17, 1849. The notice contained the following qualifications:

You are however clearly to understand that unless you conduct yourself in your new situation to the satisfaction of the Chief Supt, and shew not only that you are diligent in your studies, but that your capacity is such as is like [sic] to make you at some time a useful Public Servant, you must expect that your services will be discontinued, and in that case you will not be considered as having any claim to be employed in any other Branch of H.M. Service in China.

It will be necessary for you to procure a Certificate at the termination of each Quarter from Mr. Wade, shewing that you have attended with regularity to your studies in the Chinese Language.³⁹

For a young man who had few alternatives, by reason of training and inclination, the notice was clear enough. That he developed a driving determination to succeed may be considered a normal response to the conditions of his tenure.

Having reached the starting point in Lay's public career, an attempt can be made to draw some general conclusions about the formative influences which conditioned his outlook and motivation with

38. FL ms. Victoria, Hongkong. No. 58. The copy available is the original of the notification.

39. Ibid. Johnston to Lay No. 130 Original ms. Fairbank "NSEQ" p.138 dates the appointment from Sept. 5, 1849. He cites "Return of Student Interpreters....., 1847-1872 presented to the House of Commons by Command, (London 1872)." This date must be the date of confirmation of the appointment in London, retroactive to June 1.

respect to that career. In the first place, it must be concluded that the attraction of "China" could not have been a dominant influence. If there had ever been the lure, for the youthful mind, of the "mysterious East", and there might have been such a lure from 1839-41, it was shattered by the succession of blows commencing with the division of the family in 1841 and culminating with the death of his father in China in 1845. In this latter respect, it should be recalled that young Lay was but nine years old when he last saw his father.

Secondly, when he was eventually propelled to China, it was, in part, in fulfillment of his father's wish and, in part, it may be suggested, it was in terms of a substitution for the frustrated happiness of his mother. As a result of the misfortunes that struck the family, the responsibilities (very clearly crystallized in his Guardian's memorandum of 1849) thrust upon Lay were to prove - and to surpass - the "fame" of his father and to establish the "fortune" of his family.

Thirdly, these conditioning influences affected a lad, who from the age of fourteen, was given little leeway to determine the direction of his own future. His formal, general education was over too early for it to have a vocational value for him. The environment into which he was transplanted in 1847 offered very little range for his development. Virtually the only avenue to "fame" open to him was the public service. "Fortune", under the best of circumstances in the vocational

sphere - in terms of his religious training, both in England and Hongkong - could be acquired only slowly and painfully.

Finally, the extent of the impatience, the self-reliance and the isolation⁴⁰ that were being engendered in H.N. Lay can be measured by reference to his first public enterprise. After eighteen months of Chinese language study, at sixteen and a half years of age, he, a British subject, had the temerity to seek, and the fortitude to accept, a position as interpreter in the employ of the United States authorities, who were proposing to use his services in negotiation with the authorities of Japan.

It was with this background that H.N. Lay was taken into the China Establishment of Her Britannic Majesty's Government in mid-1849.

40. There is nothing in the family records to indicate what happened to G.T. Lay [II], who disembarked with his brother in Hongkong in 1847. My surmise, based on a reference in a letter from G.T. Lay to H.N. Lay (JLL ms. July 10, 1845, "As George has not a turn for Latin I do not care to have him troubled with it. A good hand and a readiness in accounts would be of more importance to him.") and on a reference by H.N. Lay of 1862 is that he was taken into one of the smaller British firms as an apprentice clerk.

Chapter IV

In Her Majesty's Service - First Phase: 1849-1854.

It was exactly six years from the date of H.N. Lay's initial appointment as Supernumerary Interpreter to the date - June 1, 1855 - that Lay took up his appointment as British representative in the foreign inspectorate of the Shanghai customs system. For the purpose of evaluating various aspects of the developments in his career, this six-year period may be conveniently divided into two parts. The first part extends to the Spring of 1854, at which time he was given a temporary assignment as Interpreter in the Shanghai Consulate. The second part covers the whole period of his activities in the Shanghai Consulate where, in addition to being the Acting Interpreter, he was also posted, from July 1854, to the Acting Vice Consulship.

Insofar as Lay was concerned, the first period, with which this Chapter will deal, was primarily one of his continuing apprenticeship in the China Service. In the second part, to be dealt with in the following chapter, Lay was provided with a succession of opportunities which, when exploited, enabled him to fill an increasingly significant role in the relations between Britain and China.

Chronologically, between June 1, 1849 and April 25, 1854, Lay had four distinct assignments. He was carried, in the Office of the

Chinese Secretary in the Superintendency, as Supernumerary Interpreter until 1852.¹ However, on his own request, from March 3, 1851, he acted as Interpreter for the Hongkong Police and Supreme Courts, which were arms of the colonial administration.² When John Bowring, Canton Consul, served as locum tenens, in the capacity of Superintendent of Trade for Sir George Bonham, Lay was sent to fill the vacancy. He was assigned as temporary Junior assistant on the Consular Staff³ and remained at Canton only a short time when he was recalled to Hongkong on July 1, 1852,⁴ and subsequently promoted to Second Assistant in the Superintendency.

After Bowring had taken his home leave and had returned to Hongkong in April 1854 as successor to Bonham, he contemplated the appointment of Lay (at the age of 21) as Assistant Chinese Secretary in the

1. FO 17/187. No. 1 Bonham to Palmerston. Jan. 1, 1852. Inclosure of Establishment List.

2. FL ms. Draft Lay to Johnston. 3rd March 1851. Original Johnston to Lay, No. 20. Same date.

3. FL ms. Original, No. 4, Johnston (at the direction of "His Excellency Major General Jervois") to Lay, 13 April 1852. FO 228/142 No. 6 Bonham to Bowring, 12 April 1852. In this correspondence Lay is described simply as an "assistant." In FO 228/154, Enclosure in No. 66 to P. Hughes, Assessor of Income Tax, 1 September 1853, in the "Copy of deductions for Income Tax, 1853. Vol. VI" Lay is listed as Junior Assistant at Canton from April 15 to June 30, 1852. There were two other assistants at Canton at this time.

4. FO 17/191. No. 64, Bowring to Malmesbury. July 1, 1852. Vide ~~ms.~~ n.35

Superintendency.⁵ However, a combination of home leaves and sickness caused a shortage of qualified interpreters in China which became acute in the early months of 1854.⁶ In response to desperate appeals from the Shanghai Consul, R.B. Alcock, Lay was sent to Shanghai.⁷

As late as December 1854, the Foreign Office assumed that Lay was the Assistant Chinese Secretary in the Superintendency.⁸ In actual fact conditions at Shanghai induced Bowring to keep Lay at Shanghai and, consequently, he never did take up this position. The effect of the developments at Shanghai on Lay's subsequent career were to be profound. This, however, is a subject that will be considered in another context.

In the immediate context, having outlined the succession of the four posts actually filled by Lay in the first period, attention may be directed to the apprenticeship itself and to the broader framework within which Lay's development was taking place. Lay continued his language training, in the first post, under the direction of Thomas F. Wade and under the surveillance of Gützlaff until the latter's death

5. FO 17/213. No. 11, Bowring to Clarendon, April 20, 1854.

6. Loc. cit. Also No. 18, Bowring to Clarendon, April 29, 1854.

7. FO 17/213, No. 11. Op.cit.

8. FO 17/211, No. 184, Clarendon to Bowring, December 8, 1854.

in the Spring of 1851. Wade needs little attention by way of introduction to Sinologists. When Lay joined the Superintendency, Wade, then 31 years old, had been studying the language for about ten years, and he was Acting Chinese Secretary.⁹ As required by Lay's letter of appointment, Wade regularly certified the satisfactory progress being made by his charge. Gützlaff, shortly before his death, had also examined Lay and had certified as to his competence, signifying perhaps that Lay was sufficiently prepared to take up an interpretership.¹⁰

Apart from the time spent on his language study, Lay also assisted with the routine clerical work in the Superintendency. In addition, he was being called upon for service within the colonial branch of the Establishment.¹¹

The pressure of these other clerical duties may have been one of the reasons why he took the initiative in seeking a transfer to the Police and Supreme Courts.¹² As interpreter for the Court, his

9. FO 228/105. "Separate" Bonham to Palmerston, Feb. 15, 1850.

10. FL. ms. Draft. Lay to Elmslie. Canton, May 10, 1852. Copy was forwarded to Bowring by Elmslie along with other reports of the Canton staff. FO 228/142, Canton No. 71, May 29, 1852. FO 13/192, No. 98, Bowring to Malmesbury encloses a précis of the letter.

11. FO 228/105. "Separate" op.cit. Bonham, incidentally, also notes that Lay "has made a very sufficient progress in the language."

12. FL. ms. Victoria. Draft. Lay to Johnston, March 3, 1851.

duties would be largely devoted to language work. The opportunities to do oral interpreting would also be much more frequent than in the activities in which he was engaged on behalf of the Superintendency.

Other reasons which may have motivated his request would have derived from economic and personal considerations. The shortage of interpreters, that was to become acute in 1854, had not manifested itself in 1851. In the first place, the anticipated expansion of commercial and, by extension, diplomatic intercourse had not materialised at three of the five Treaty ports (Amoy, Foochow and Ningpo). At Canton, the exclusion of the foreigners from the city and the refusal of the Ch'ing Authorities (whether in their roles as imperial or provincial officials) to engage in communications with their foreign counterparts limited the number of Consular interpreters required.

In the second place, partly as a consequence of the unsettled and fluid condition of political alignments in Great Britain, partly because the terms of the Treaty System of 1842-1844 did not provide for revision before 1854,¹³ and partly, as a reflection of the personality of Bonham, the Superintendent of Trade, the period

13. Earl Swisher 'China's Management of the American Barbarians' (New Haven, Conn., 1951) Ch.5, passim. The Crimean War and the Chinese view that consideration was not due until 1856, induced the Treaty Powers to postpone their efforts at revision until the later date.

was one of quiescence in official intercourse. In these conditions the need for interpreters was at a minimum.

In the third place, there was in this period an adequate number of relatively qualified interpreters on hand who could relieve each other when leave or sickness caused a vacancy. Besides Parkes and Wade, the Meadows brothers (T.T. and J.A.T.), W.H. Medhurst, Jr., and C.A. Sinclair were available. Since the Consul and/or the Vice Consul was expected to have or to be acquiring some proficiency in the language,¹⁴ on paper at least, the Superintendency was well supplied with interpreters. The prospects for promotion for a supernumerary interpreter were thus none too bright.

In the fourth place, the outlook for the future may have been temporarily dimmed for Lay by the personnel policy favoured by Bonham.¹⁵ As competence in language was considered an important qualification for service in the Consular offices in the Treaty Ports, men who acquired

14. The issue of language study as a qualification for advancement in the Service started to come to the fore as early as 1850. It was R.B. Alcock, Consul at Shanghai, who had no language qualification himself, who revived the question. FO 17/168. No. 60, Bonham to Palmerston, June 4, 1850.

15. FO 17/168. In addition to the foregoing despatch (No. 60) a succession of despatches (Nos. 65, 67, 72 and 75) sent by Bonham to Palmerston during July/August, 1850, is the source for the background information.

this competence naturally expected to succeed to the higher appointments in the Consulates. It was not entirely a question of remuneration, for in terms of prestige "Interpreters", as such, were looked down upon as rather junior members of the Establishment.

Bonham, on his part, while recognising that the Interpreters had a reasonable claim to advancement, was a career official. He felt it his responsibility to support the claims to advancement of the staff members who were unable or who were not obliged to acquire language proficiency. These men who endured the hardships of the China Service while rendering faithful service were, in his view, entitled to recognition.

The issues began to crystallise and come to a climax between 1850-52, and eventually came to be identified as the "Battle of the Interpreters". In the early stages, Bonham attempted to find a middle ground by conceding privileges to the Interpreters comparable to those enjoyed by Vice Consuls and by supporting the claim that only those with language competence should receive preference in appointments to Consulships. At the same time, he indicated his intention to prefer non-interpreters for the post of Vice Consul but on the condition that they undertook to make progress in the study of the language.

John Bowring, who prided himself on his own linguistic abilities, gained increasing influence in the affairs of the Superintendency and

used this influence to support the Interpreters.¹⁶ After 1851, the balance shifted in their favour. On a direct appeal by Parkes to London, Parkes' claim to a Vice Consulship was upheld.¹⁷

From the foregoing factors, it may be concluded that in 1851 the path to an Interpretorship was not clearly illuminated. As long as Lay was a Supernumerary, his salary was £150 per annum. This salary was admittedly not sufficient to maintain a "gentleman".¹⁸ When it is realised that Lay, in all probability, expended some of his salary for private tuition, his impatience to gain advantage from his language study can be more readily appreciated.

After assuring himself that his request would be favourably received, Lay wrote to his Head, A.R. Johnston,¹⁹ for permission to be "temporarily employed in the Police & Supreme Courts so far as my knowledge of Chinese may be available." He also made it very clear that ".... I have no wish to quit the Service...., and I trust that my

16. FO 17/192. No. 98, Bowring to Malmesbury, Aug. 12, 1852.

17. Lane-Poole, op.cit. pp. 183-185.

18. FO 17/190 [June, 1952]. Undated memorandum, Bonham (in England on leave) to Malmesbury. Recommends increase to £200. The increase appears to have gone into effect in 1852, but in a Bowring memorandum on interpreters of Feb. 8, 1854 (FO 17/212), he still seems to be advocating an increase to £200.

19. FL ms. Draft. March 3, 1851.

temporary employment.....will not prevent me from succeeding in my proper turn to any Interpretorship which may fall vacant....."

Approval was promptly granted and Lay remained in this employment slightly over a year.

The advantages Lay derived from this employment were two-fold. He was able to devote most of his energy to duties that made use of his language training and it provided him with the means to augment his tuition in the language. Just after the termination of this employment, he reported that from July 1851 on, he had been responsible for "all the correspondence that passed between the Magistracy and the Chinese Authorities at Kowloong.... [and] in addition [he had] translated all the Public Notices issued from the Magistracy."²⁰

In the same report, he also noted,

I have always studied with a Mandarin Teacher, of whose assistance I still [May 1852] continue to avail myself, and on my appointment to the Magistracy I engaged an additional one to instruct me in the Canton dialect - in which I had occasionally to interpret.²¹

Since the salary of a Supernumerary was conceded to be inadequate and since the engagement of one tutor could hardly have cost Lay

20. Vide antea, n.9

21. Loc.cit.

less than one-fifth of his annual salary,²² his ability to engage an additional tutor would lead to the conclusion that whether directly or indirectly his resources must have been increased in this post.

By pursuing this course, Lay placed himself in an advantageous position. He was able to make use of the training he had already acquired and he was able to channel his apprenticeship in the direction of further language training. The lack or limitation of opportunity for junior members of the Superintendency and of most members of the Consular staffs in the Treaty Ports to pursue a sustained course of language study was a disadvantage to them. The man with language training had, of necessity, to be assigned to more responsible duties and this in turn became a qualification for more rapid advancement in the Service.

If, as Lay's letter requesting the transfer implied, he was expecting an early appointment to an Interpreter's post or to a post

22. It is not clear to what extent staff members were expected to finance their own tuition. The implication in the quoted paragraph is that Lay paid his own tutors. In the summary of language study of members of the Superintendency contained in FO 17/192, No. 98, Aug. 12, 1852, J.A.T. Meadows complained that he had expended a large sum without recompense. He did not enter the Service, however, as a Supernumerary. (Fairbank, "Trade", p.166, n.25 summarizes Meadows' report). F.E.B. Harvey, on the other hand, then 1st Ass't. at Hongkong, acknowledges that he had been "rewarded" and "reimbursed" to his satisfaction for the expenses he had incurred.

in the higher echelons of a Consulate, he did not reckon with the surfeit of Interpreters, nor with Sir George Bonham's sense of propriety. He had still to serve his full apprenticeship in the administrative structure of the Service.

Preparatory to his taking home leave, Bonham had arranged the appointments that were to be in effect during his absence.²³ As far as Lay was concerned, this led to his temporary appointment "to perform the functions of an assistant" at Canton to fill the vacancy created when Bowring, who was Consul at the Port, took up his duties as Acting Superintendent of Trade.²⁴

In one important respect Lay's new assignment was a "promotion". His salary was raised, during his brief tenure of the post, to that of a Third Assistant - £270. At the same time, the assignment had its galling features. For a number of reasons, Canton was probably generally considered among the least desirable of the Consulates.

23. Fairbank, "Trade", Vol.II, App.A. p.47 ff., provides a table of the officials posted to the Treaty Ports from 1843-1858. There are several inaccuracies in the table since some data is derived from the London Foreign Office records which did not always keep up with, or reflect the changes made in the field. Thus, for example, Fairbank lists H. Oakley as Junior Ass't. at Canton from "1845 - Jan. 19, 1857" whereas in 1852 he was 2nd Ass't. Also, F. Parish is listed as 2nd Ass't. in 1852, but during Bowring's absence he was Acting Vice Consul.

24. FL ms. Victoria, No. 4, Johnston to Lay, April 13, 1852. FO 17/188, Victoria No. 3, Jervois to FO, April 14, 1852. Implementation of recommendation made by Granville to Bonham, No. 4, Jan. 19, 1852.

The cost of living was extremely high. The following remarks, from a letter of H.S. Parkes, sum up the prevailing situation,²⁵

Firstly, I have not been removed to this Port 'on permanent promotion', being employed here in precisely the same capacity as that in which I served at Amoy, and other Ports. The addition of £100 to my salary cannot I submit be considered as promotion in reference to my transfer to a Port, where my annual expenses are increased in a ratio of at least double that Amount; and where the inconvenience and discomfort of residence are so great that I should think nothing but the hope of rendering useful service to her Majesty's Government, and thereby obtaining a claim to promotion, would ever induce to the desire of being attached to this Consulate.

In addition, Sino-foreign relations at Canton were the least satisfactory in comparison with the other Treaty ports. The city was still closed to foreigners whose physical movements were restricted to a very limited area. They were frequently subjected to molestation and indignities.

More specifically for Lay, the opportunities for translation work - whether oral or written - were not only limited because of the refusal of the Ch'ing Authorities to communicate directly with foreigners, but also because Parkes was the Interpreter of Canton. This factor did not entirely preclude Lay from translation work, for he did report on information about rebellious activities in the vicinity of Canton, which was culled from the "Peking Gazette" and

25. FO 228/142, Canton No. 81. Elmslie to Bowring. June 12, 1852. Transmits letter from Parkes, who requests an increment to his salary.

local notices. Another unsatisfactory feature, to which Lay indirectly gave expression,²⁶ was related to language training. The language of diplomacy, on which Lay had concentrated, was Mandarin and the Cantonese environment was not conducive to the study of the Court "dialect."

It did not take long for the unsatisfactory conditions at Canton to impress themselves upon Lay. His dissatisfaction was reflected by the fact that as soon as he learned (barely two months' later) that a vacancy might occur at Shanghai,²⁷ he asked to be appointed as the replacement. The extent of his desire to make the move can be easily gauged, for he was willing to accept a posting to Shanghai as a Junior Assistant.²⁸

He did not officially record his dissatisfaction with Canton. He made his appeal on the ground that placement at a "Northern Port" would afford a better opportunity for developing his knowledge of the language. His application was not taken up because the vacancy

26. FL ms. Draft, Canton, Lay to Elmslie, June 9, 1852. FO 228/142, Canton No. 78. Elmslie to Bowring, June 9, 1852 encloses a copy of Lay's letter with recommendation for approval.

27. FO 17/190, No. 41, Bowring to Malmesbury, June 7, 1852. Reports that W.H. Fittock at Shanghai was offered post of 2nd Ass't. at Canton.

28. Vide antea. n.26

did not materialise at Shanghai.²⁹

His plea was not fruitless, however, for it led to his recall to Hongkong a few weeks later.³⁰ G.S. Morrison had been transferred from Canton to Hongkong, but seemed to prefer the former location. Lay may also have been recalled to Hongkong as a result of the replies Bowring received to a canvass he initiated of the state of language proficiency of all Superintendency personnel. From these replies, allowing for a certain lack of modesty on Lay's part, it was apparent that Lay was among the four or five who were most proficient.³¹

Since two Supernumerary Interpreters were being processed for

29. FO 17/191. No. 64, Bowring to Malmesbury, July 1, 1852. Reporting that Fittock had declined the offer to transfer to Canton. Since Fittock was only acting second ass't. at Shanghai, the added inducement of a permanent promotion was not enough to attract him to Canton.

30. Loc.cit.

31. FO 17/192. No. 98. Bowring to Malmesbury, Aug. 12, 1852. This despatch is Bowring's long discussion on the subject, enclosing the lengthy summary of the reports received. Based on reports from all stations of the Superintendency (excluding the permanent Interpreters and the Consuls, who were apparently not expected to reply) of 17 replies, only two - Lay and J.A.T. Meadows - gave positive evidence of achievement and continued application. A few replies were equivocal, e.g. "good enough to get on locally", "capable of doing common routine of office business."

appointment,³² and since T.F. Wade was promoted to Vice-Consul at Shanghai, Lay could be a valuable member of the Hongkong staff. In any case, Morrison and Lay exchanged locations in July 1852, and Lay remained in Hongkong until April 1854.

From his recall, Lay carried on the duties of the Second Assistant in Hongkong and although he may also have assisted with the duties of the Chinese Secretary's office, he was, at first, only listed as a Third Assistant.³³ There were, nonetheless, several compensations to offset this.

Following the "depression" in the wake of the unwarranted initial optimism, the economic and social life of the new colony was beginning to develop and expand. Under Bonham, improvement in administrative organisation went hand in hand with improvement in the relations between the groups residing in the colony. The colony was a more attractive place to live in, in 1852, than it had been in 1847.³⁴

Having devoted himself to an intensive study of Chinese for five years, Lay was in a position to divert most of his energies to other

32. FO 17/194. No. 172, Bowring to Malmesbury. Dec. 18, 1852; acknowledging FO No. 70, Oct. 21, 1852. Also noted by Malmesbury on despatch No. 98 cited above on Oct. 19, "I have just appointed two lads of 17 & 15 years of age as supernumerary interpreters".

33. FO 17/192, No. 121 Bowring to Malmesbury. Sept. 11, 1852.

34. Eitel, op.cit. CH. XVI, passim.

aspects of public affairs. The Superintendency at Hongkong was the focus for virtually all the China correspondence. Lay had the opportunity, if he were inclined to take advantage of it, to familiarise himself with all the issues affecting intercourse between Great Britain and China. Quite apart from the merits of the views expressed in them, access to the despatches and memoranda of Bonham, Bowring, Alcock and Wade would provide a fairly comprehensive tuition in the principles and practices of diplomatic service.

Finally, through close association, Lay was able to gain Bowring's favour. As was indicated earlier in this Chapter, in the "Battle of the Interpreters", Bowring's sympathies were with the linguists. Since he was impressed with the progress Lay had made in the language, he did not hesitate to bring his name forward for commendation whenever there was an appropriate occasion for doing so.³⁵ Bowring also, apparently without confirmation from London, actually "promoted" Lay to Second Assistant, thereby increasing his salary to

35. Bowring had no sooner taken up the duties of Acting Superintendent than he brought Lay's name forward. FO 17/188 No. 1 Bowring to Granville, April 19, 1852. "Mr. Lay who is appointed to the vacancy has left for Canton, and I am glad that in his case encouragement has been given to his meritorious study of the Chinese language....."

£324.³⁶ As soon as Bowring took over the duties of the Superintendency in April 1854, after his return from home leave, he posted Lay to the more responsible (and more lucrative) position of Acting Interpreter at Shanghai, and pressed London for a permanent promotion for him.³⁷

The compensations for Lay, in the long run, offset the failure of his first efforts to get transferred to Shanghai. He continued to fulfill responsibilities beyond those required by his official position, and officially, at least, did not complain. He did not, throughout the remainder of the period being considered, make any further formal requests to be transferred to any other post in the Establishment.

There was another, private, reason which may have induced Lay to be content with his position at Hongkong throughout this period.

36. Lay's exact position through much of this period seemed to be in question. In FO 17/192, No. 121, Bowring, op.cit., the attention of the FO is drawn to the fact that Lay was receiving 3rd Ass't's. pay, though working as a 2nd Ass't. No formal notice of a change in status is recorded in Foreign Office despatches of the period. FO 17/212 No. 1, Bonham to Clarendon, Jan. 1, 1854. In the Establishment List enclosed in this despatch, however, Lay is listed as 2nd Ass't. at £324. Bonham must have had some question about this for in his No. 20 of Feb. 7, 1854 (before a reply from London to his No. 1 could have been received) he states he was only aware that Lay's appointment to Canton authorized Lay to receive salary at £270.

37. FO 17/213, No. 11, to Malmesbury, April 20, 1854.

Reference has already been made to the fact that two Supernumerary Interpreters were added to the Establishment in 1852.³⁸ Treaty revision was in the offing. Since one of the objectives of the Powers was to seek the opening of additional ports to foreign trade, additional interpreters would be required.

These prospects and Lay's increased remuneration were undoubtedly connected with the fact that Lay's next younger brother, William Hyde, (the third of G. Tradescent Lay's five sons) made his appearance in Hongkong. The exact date of his arrival has not been established, but on the next occasion that Supernumerary Interpreters were being considered for appointment, in late 1853, W.H. Lay was offered a provisional appointment by Sir G. Bonham. This was approved by the Foreign Office, in part because of the accomplishments of H.N. Lay.³⁹

H.N. Lay's behaviour on this occasion, though the incident was of minor significance, gives some insight into the development of one important aspect of his character. At the same time that Bonham forwarded his recommendation, Lay forwarded a private letter directly to Lord Palmerston, who was Prime Minister - but not, at the time,

38. Vide antea p38 n. 32.

39. 17/220, Unsigned office memo (appendix, probably by E. Hammond) Feb. 1, 1854 notes that Bonham, "in a late dispatch [sic]" made a provisional appointment at £150. The writer "presumed" Clarendon would confirm it at £200. W.H. Lay was on the Establishment List for Jan. 1, 1854 as Supernumerary Interpreter (Prov.).

Foreign Secretary - soliciting his support.⁴⁰

It was not, however, the direct appeal which was distinctive, although an appeal of this sort coming from a 21-year-old junior staff member might in some circumstances seem somewhat presumptuous. What was distinctive was the terms in which the appeal was made. Citing first the application being forwarded by Bonham to Clarendon, who was Foreign Secretary, Lay continued,

It is grounded upon a recommendation which, when Secy of State for Foreign Affairs, your Lordship in a despatch dated 18th November 1846 was so kind as to make to Sir John Davis of "two sons of the late Mr. Consul Lay" - I am indebted to your Lordship for my introduction into H.M.'s Service, and I venture to presume upon your Lordship's former goodness to solicit that you will assist the present application with the weight of your powerful influence.

Your Lordship is well aware of the narrow pecuniary circumstances in which my Mother has been placed since my Father's death - and your kind influence in the case of My brother will relieve her of one of a numerous family, which she has with my assistance to support.⁴¹

The documentation demonstrating that Lord Palmerston's letter of recommendation referred to herein applied to the two eldest sons of G.T. Lay (H.N. and G.T.[II]) has already been cited.⁴² It has also been established that the two eldest sons did, in fact, proceed to Hongkong in 1847.⁴³ It would be hard to credit H.N. Lay with ignorance

40. FO 17/209, Hongkong, Lay to Palmerston, December 19, 1853.

41. Loc.cit.

42. Vide antea. Ch.II n. 15; Ch.III p.57 n.15; p.57 n.16

43. Vide antea. Ch. III p.6/ n.28

of the terms of the original recommendation.

In his letter to Palmerston, Lay must be considered to have sought deliberately to mislead Palmerston. Lay's obvious intention was to have the original recommendation given in support of G.T. Lay's second son applied to his third son, without calling the substitution to Palmerston's attention. The specific phraseology of Lay's letter was such that it did not, technically, misinform Palmerston, but this is not the issue. In the context, it gives evidence of Lay's willingness to adopt a suspect technique to further a personal objective.

It is possible, of course, that had Palmerston seen Lay's letter, and recalled the actual circumstances of his recommendation, he might have been approving of Lay's progress in the arts of diplomatic usage. Lay's letter, however, was diverted⁴⁴ and by the time it reached the Foreign Office, W.H. Lay's appointment had been confirmed. Although it thus had no bearing on the immediate issue, it would be interesting to speculate what reaction Lay's letter might have stimulated among the permanent staff at the Foreign Office. This demonstration of a

44. The letter was forwarded to the Foreign Office on January 31, 1854, with the following note added: "My dear Spencer [?]/ You know that Lord Palmerston does not interfere in F.O. patronage, and I have no doubt Lord Clarendon will appoint the best man, whoever he may be. - Pray therefore commit Mr. Lay's letter to the basket or the pigeon-hole - as you may think fit./ yrs. truly (Sgnd) R.W. [Grey?]."

willingness to circumvent "proper channels" might have elevated a few eyebrows in that Office.

Aside from the references to his family affairs contained in his personal letter to Palmerston, there is no information available about Lay's private life. It may be presumed that he corresponded with his mother and that, if so, the letters have perished. It is doubtful, however, that the record, if available, would provide much information of interest. Lay was under the burden of keeping his standard of living to the level of providing himself with the barest essentials. Until late 1852, at least, his income permitted him no leeway to do any more than this. Though he might have afforded a higher standard subsequent to the increases he received upon his promotion, he could not help but be conscious of the needs of his mother.

It is a moot point whether it was the quest for "fame" or the needs of "fortune" which motivated him most. Both unquestionably were responsible for the intensity with which he pursued his official duties and private training. On the evidence of his activities in public life and his achievements in acquiring a comprehensive knowledge of Chinese, it is difficult to see how he could have had much time or energy to indulge in personal fancies or frivolities. The consequences for the personal development of the individual were not always salutary.

On the one hand, Lane-Poole records the deficiencies in personal

development which Parkes, who was forced to pursue a very similar programme, felt in later life.⁴⁵ On the other hand, one of the factors that prompted Bonham to recommend non-interpreters for "the more responsible posts of Vice-Consul or Consul", was his opinion "that the close attention indispensable for a successful study of the Chinese language warps the mind and imbues it with a defective perception of the common things of real life."⁴⁶

At the conclusion of his years of "apprenticeship", as he was approaching his twenty-second birthday, Lay had established his credentials as a relatively highly qualified linguist and as a diligent and energetic junior administrator. Whether it be described as astuteness or craftiness, he was developing techniques useful to the art of a negotiator whose central purpose was to secure the immediate objective. The nature of his resources, his training, and his environment conditioned the development of his personality and character along very specialized lines, intensifying his self-reliance and social isolation and precluding him from understanding the outlook and values of men whose interest, and corresponding conditioning, were different from his own.

The limited intercourse between the British and Ch'ing Authorities, coupled with the fact that he was still a junior member of the China

45. Lane-Poole, op.cit. pp. 18-19.

46. Eitel, op.cit. p. 258.

Service, excluded him from playing any direct role in Britain's relations with China. Indirectly, and however unintentional, he (and Parkes) were the prototypes of the earlier "programme" to fill the needs of a vital branch of the Service. The deficiencies in the "model" served to influence new policies with respect to selection of recruits to the Service.

The circumstances and events, subsequent to his appointment as Acting Interpreter at Shanghai, which enabled him to play a more direct and more prominent role in British relations, may be viewed as the Second Phase of his public career in Her Majesty's Service. H.N. Lay was not aware, of course, that 1855 was to see the end of his career in the China Establishment.

Chapter V

In H.M. Service - Second Phase: 1854-1855.

The second phase of H.N. Lay's career in the China Service represents a clear transitional period in his career as a whole in East Asia. In the first instance, his assignment to Shanghai was understood to be only temporary.¹ In the second instance, at its commencement it was hardly anticipated that events would unfold in such a manner as to lead to Lay's "retirement" from the China Service within a matter of 13 months, when he was still only 22 years old. In both instances, his extended residence at Shanghai and the severance of his connection with the China Service, the developments resulted from the interaction of the extra-ordinary conditions that prevailed at Shanghai and from the basic motivation that impelled Lay to pursue his private interests.

This phase of Lay's career began with his temporary assignment to Shanghai as Acting Interpreter at £500, the rate at which it was proposed to pay him as Assistant Chinese Secretary. The notification to this effect was sent to the Foreign Office under date of April 20, 1854, though Lay was not officially informed until April 25.² It ends with Lay's succession to T.F. Wade as British Inspector of

1. FO 17/213. No. 11 Bowring to Clarendon. April 20, 1854.

2. FL. Hongkong No. 13. Medhurst to Lay. April 25, 1854.

Shanghai Customs with a salary of approximately £1400 (\$6000).³

Before considering the specific course of events which led to this transformation in Lay's career, a brief general survey of the situation at Shanghai may serve as a useful introduction.⁴

Shanghai, among the four additional Treaty Ports opened by the Treaty of Nanking, had developed, from the standpoint of foreign intercourse, the most favourably. Located at the apex of an extensive water-transport network in its hinterland and being accessible to, though protected from, the open sea, it was a "natural" entrepot

3. FO 97/99 (The bulk of the correspondence concerning the "Shanghai Duty Questions" and the Foreign Inspectorate were kept in a separate file at the FO. The correspondence for 1853/54 was classified as 97/99 & 97/100. For 1854-1858, the correspondence was classified as 17/309 & 17/310.) No. 77, Bowring to Clarendon. July 7, 1854. This despatch contains all the documents on the introduction of the Inspectorate. The agreement specified "\$ 6000". The estimated real value in terms of £ Sterling varied from between £1400 to £2000. The individual claims, with the context, will be cited in later notes.

4. On conditions and events at Shanghai, the fullest data is provided by Fairbank, "Trade". The best analysis describing the reasons for Shanghai's importance is Rhoads Murphey's "Shanghai: Key to Modern China". (Cambridge, Mass. 1953). For detailed information on subjects covered in this and the following chapter, Fairbank "NSEQ" and Fairbank's series of four articles (details in bibliography) published in the "Chinese Social and Political Science Review", Vols. XVIII-XXI (Jan. 1935 - April 1936). All five articles must be used with caution since there are numerous typographical errors in dates, etc., and in some instances the facts are confused. Morse, "Conflict" and Wright, "Hart" supply useful supplementary data.

for exports and imports.⁵

The native population, with a high density in Shanghai and its environs,⁶ was primarily occupied in light hand industry, agriculture and fishing. Prior to its development as a focus for international intercourse, it was devoid of any major significance as a cultural, administrative or military centre.⁷ These factors combined to condition the population to a relatively passive acceptance of foreign intrusion and foreign intercourse.

To the extent, also, that the official centre of diplomatic intercourse in the years prior to 1852 was nominally at Canton, it was possible to develop a positive pattern of contact with the Ch'ing Authorities responsible for Shanghai. The conflicts of interest were further minimised by the fortuitous circumstances that it was possible for the foreign intruders initially to occupy, for mercantile and residential purposes, sites that were ideal from their standpoint, but which were outside (literally and figuratively) the zone of native interest. Finally, the Ch'ing "official" assigned direct responsibility for "management of barbarian affairs" was, after about 1850, not a member of the mandarinat, but a member of a prominent Cantonese

5. Murphey, op.cit., passim. Robert Fortune had recognised the potentialities of Shanghai even prior to 1847. cf. Wright "Hart", p.74

6. Murphey, op.cit. p.22.

7. Fairbank, "Trade", p. 357

mercantile family.⁸

Another factor to be borne in mind when considering the conditions of this period is that the actual physical impact of the foreign intrusion was comparatively inconsequential. When Lay arrived at Shanghai on May 1, 1854,⁹ the number of adult foreigners in residence, of all nationalities, was probably under 250.¹⁰ Before 1853 and the appearance of insurrectionary forces in the immediate vicinity of the city, the absence of any serious "external" threat seemed to encourage and intensify factionalism and strife within the resident community. Political (nationalistic), economic, moral and social cleavages were sharp and bitterly prolonged.

The new community, in embryo, was "international" and "cosmopolitan", but the cleavages prevented all but the most essential programmes for integration and cohesion from being realised.¹¹ Not even the capture of the native city by rebel forces in September, 1853

8. Wu Chien-chang (commonly known as "Samqua"), although active at Shanghai from 1848, did not become "acting" Taotai until 1851. ECC p. 865.

9. NCH. No. 199. May 5, 1854. p. 168.

10. Fairbank, "Trade". p. 159 lists 214 for 1854; p. 422, after adjustments, suggests "less than 250". Morse, "Conflict" p. 346. For 1855 - 243.

11. These were only temporarily relaxed during the Fall, 1863, when the direct threat to the settlement appeared most acute. For some of the basic changes see Morse, "Conflict". Ch. XVIII and Fairbank, "NSEQ", p. 144.

was sufficient to motivate the inhabitants to reconcile the deep antagonisms which beset the community, although the immediate threat did lead to some measures for collective defence. In ways which will be described in subsequent pages, the conflicts among the Chinese opened up a new sphere in which the foreigners were to extend the conflicts which existed among themselves.

When Lay took up his post at Shanghai, the special problems that had been created by the spread of rebellion into the lower Yangtze plains were becoming delineated.¹² Because of the outbreak of the Crimean War ideas of pressing for Treaty revision were shelved, although seeking for adjustment of differences - particularly in view of the presumed embarrassment of the Ch'ing government - was expected to continue.

As for the situation at Shanghai, it was necessary to formulate an arrangement which would regulate a complex set of incompatible relations. The complexity of the situation was aggravated because the rebel force which occupied the native city was a segment of one of the traditional Chinese secret societies - the Triad Society. While the leaders of the faction professed to be associated with the Taiping movement, they acted independently. On their part, the Taiping Authorities, whose newly established headquarters were at

12. In their initial phase, the disturbances were viewed as part of the Taiping movement. The Taipings, however, did not make a move on Shanghai until several years later.

Nanking, denied any connection with or responsibility for the insurgents at Shanghai.¹³

The first consideration of the foreign officials was to secure life, property and jurisdiction in the foreign settlements. Officially a "neutral" policy was pursued. Since, however, the foreign settlement was contiguous to a substantial sector of the perimeter of the native city, Imperialist forces, unable to mount an effective frontal military offensive, were also precluded from establishing an effective siege of the rebels.¹⁴ The fundamental diplomatic dilemma was further complicated by the fact that the sympathies of the inhabitants of the settlement, foreigners as well as Chinese, were divided. In the event, the net effect was to prolong the stalemate between the insurgents and the Imperial forces. "Neutrality", in consequence, was the only shibboleth that could be invoked to befuddle the government and to preserve a hostile peace within the foreign settlement.

Of special, and doubtlessly paramount, concern to the majority of the foreign residents was the situation with respect to trading operations. Prior to the appearance of the rebels, a modus vivendi

13. The question of the connection continues in dispute. Morse, "Conflict", p. 458, and Fairbank, "Trade", p. 420, support the statement made here. Wright, "Hart", pp. 91-92 and n.8, p. 118 (citing Favre) appears to support the contrary view.

14. For map. cf. Morse, "Conflict" p. 454.

had been achieved among the trading community, the Ch'ing officials and the foreign officials. The resultant "system" permitted a reasonable flow of legitimate imports and exports. The arrangements were such as to satisfy the Ch'ing officials, while the irregularities that did exist merely served to afford an academic differentiation between the "honest trader" and the "smuggler". The irregularities may have retarded, but they had not prevented, the growth in the volume of trade at the port.

The activities of the rebels did not, contrary to expectations, result in a cessation of the flow of commodities. There was considerable fluctuation in price and exchange levels, but the major staples for export - tea and silk - continued to find their way to exporters. The sale of legal imports declined, but their distribution in to the interior was not seriously curtailed.

The factor that caused trading relations to become increasingly chaotic was that the rebel occupation of the native city totally disrupted the Customs administration at the port. The British Consul, R.B. Alcock, with the U.S. Commissioner, H. Marshall, sought through a "Provisional System" to preserve, by fulfilling its legal obligations, the treaty structure.

"Provisional" was an apt description. On the British side, it lacked Bonham's positive support. On the American side, though the Commissioner was a forceful individual, he lacked both the prestige and the means adequately to enforce the system. In justice to official

U.S. policy, however, it may be noted here that the only revenue the Ch'ing government actually received for the period the system was in operation was a third of what had been levied on American traders. Since the foreign authorities were unwilling to use force to control their own nationals and since the Ch'ing attempts to do so were farcical, it was normal procedure to circumvent the regulations. The system succ^uumbed in January 1854, in part because it was unworkable in any case, and in part because word reached Shanghai that the British Government was only willing to support it if it were applied to the entire trade of the port. As Fairbank cogently concluded, this condition, "so logical in London, was a mockery in Shanghai, for vessels of non-treaty powers were outside the scope of the treaties, just as they were beyond the weak grasp of the taotai, whose hands were tied by the enforcement of foreign neutrality."¹⁵

In the succeeding months, conditions deteriorated in both the diplomatic and commercial spheres. Extensive aid (at the market price) was being supplied to the rebels by both foreign and Chinese elements in the foreign settlement. Off-season external trade was continuing and traders openly defied the efforts of the authorities to exercise any jurisdiction over it. The prospect of a jungle

15. Fairbank, "Trade" p. 436.

morality with its consequent disorder posed an obvious threat to the security of the community and to the welfare of the traders. The need to resolve the basic problems called for renewed exertion on the part of the responsible officials.

These developments of 1853-54 had taxed the resources and energies of the officials of the British Consulate to the utmost. T.T. Meadows, the regular Interpreter, left China for a home leave to recover his health. The Consul, R.B. Alcock, was in poor health and was periodically confined to his bed.¹⁶ T.F. Wade, the regular Vice-Consul, had been required to take on the additional duties of the Interpreter, doubly burdensome because Alcock was without competence in the language. The desperate appeal made by Alcock to Bowring for additional assistance would thus appear to have been warranted.

It has already been noted that Bowring selected H.N. Lay, despite the short-handedness of the Superintendency staff because,

From the progress which Mr. Lay has made not only in the Chinese written language and Mandarin dialect, but also in the Canton dialect, he deserves a particular recommendation. The able manner in which he has discharged his duties as first [sic] assistant does him also great credit....¹⁷

16. Fairbank, "Trade", p. 437.

17. FO 17/213. No. 11 Bowring to Clarendon, April 4, 1854.

On the basis of his versatility in use of the language, there is no question that Lay was the most qualified candidate available. Of the other interpreters who were no less competent, W.H. Medhurst was Chinese Secretary (scheduled to become Consul at Foochow), Parkes was slated to be Consul at Amoy, and Wade was already Vice-Consul at Shanghai. On the basis of seniority and relative competence, there were three other candidates who might have had a claim to the Shanghai post. C.A. Sinclair was Interpreter at Amoy, W.R. Gingell was Interpreter at Foochow and M.C. Morrison was Interpreter at Canton.

Bowring temporarily forestalled overt complaints from these last three by the expedient of appointing Lay at a salary of £500. The young aspirant, having worked as a first assistant at the second assistant's salary of £324, was not in a position to balk at an approximate 60 per cent. increase. But the senior men who were passed by could not help but be resentful. They were not only senior by virtue of much longer service, but they were also considerably older than Lay. At the same time, as the normal salary for Assistant Chinese Secretary was £600 and the normal salary for the Interpreter at Shanghai was £700-800,¹⁸ Lay was undercutting the salary-levels of the Service. The undercurrent of feeling generated against Lay on

18. FO 17/225. No. 130, June 7, 1855. Enclosing "Estimates for 1856". Data on p. 18. The estimates were prepared at the beginning of 1855 (presented to H. of Commons, March 27, 1855) and were projected from the rates prevailing at the time.

this occasion was to grow in consequence of further "favouritism" shown towards him by Bowring in the succeeding months.

But there were other sound reasons for the preference shown to Lay. In fulfilling the duties, periodically, of First Assistant he had the excellent opportunity of acquainting himself with all the correspondence relating to the developments at Shanghai. In addition, as recently as February-March, 1854 Lay had been a member of Bonham's entourage on the latter's round of farewell visits to the Treaty Ports. Thus, although the visit was a brief one, he also had an opportunity to acquire first-hand knowledge of conditions at Shanghai.¹⁹

The years of language training and of administrative work and the knowledge acquired of affairs in China made it possible for Lay, in the weeks following his arrival at Shanghai, to exploit the succession of opportunities which opened up for him. Negotiations were in progress²⁰ and decisions were being made to resolve the basic problems confronting the settlement. In his role as Interpreter, Lay was on the "inside" of most of the important negotiations and gained personal knowledge of the

19. NCH. No. 189. March 11, 1854. "Extra" reports departure of Bonham and suite (including H.N. Lay) on March 4.

20. FO 228/176. No. 40. Alcock to Bowring. May 1, 1854; No. 45. Same, May 23, 1854. These despatches and enclosures, most of which were eventually forwarded by Bowring to London, also document the commencement of Lay's duties. Thus, Encl. No. 5 in the latter despatch is a translation by Lay of correspondence from Wu Chien-chang to the three Treaty Consuls, dated May 5, 1854.

bases for the most important decisions. In some respects, the extent of his participation could not have been foreseen.

Generally, his duties would have been confined to the routine business of the Consulate. This would, of course, have included service to the Consul in his intercourse with his Ch'ing counterparts. To the extent that Alcock was actively engaged in negotiations and in decision-making, this gave Lay an exceptional opportunity. But an unusual opportunity also developed as a consequence of Bowring's activities.

Bowring, along with Admiral Stirling, the senior British officer in the Pacific area, had belatedly set out for Shanghai, with the object of negotiating the issues affecting Shanghai, as well as of making a probe on the question of Treaty revision. By the time he reached Shanghai in mid-June, he learned that the American Commissioner, R.M. McLane, had been unable to get any satisfaction from the highest provincial officials in the area.²¹ Bowring and McLane then decided to send the senior linguists of their respective missions to Tientsin in an attempt to open negotiations directly with Peking.

This deprived Bowring of his Chinese Secretary's (Medhurst) services. Since the local issues were very pressing - the heavy trading season was about to begin - Lay was employed as Interpreter in a series of "high-level" discussions that took place from mid-June

21. Swisher. op.cit. p. 205 ff.

to mid-July, when Medhurst returned.²²

These activities at Shanghai were the first occasion on which Lay came into direct contact with the higher Ch'ing Authorities. A minor altercation that occurred about June 20-21 between the rebel and Imperial forces, in which some British units became involved, also afforded an occasion for Lay to deal directly with Chi-êr-hang-a,²³ a Manchu official who was at the time the acting provincial treasurer of Kiangsu and who was shortly after promoted to the Governorship.²⁴

An official Ch'ing account of the altercation refers to Lay's part in the dénouement.²⁵ The Imperialists had claimed that the British had opened fire against their forces. According to the British account, the Imperial forces, whilst pursuing rebel forces,

22. The extent of Lay's participation in these negotiations is reflected in Bowring's despatches to the FO. These are all contained in FO 97/100 Nos. 55, 68, 69, 77, 81, 82, 98. June 12, - July 24, 1854 and in FO 17/213 Nos 72 and 74.

23. Swisher. op.cit. pp. 212-213. Memorial of Hsü Nai-chao received at Peking, July 7, 1854. Quoted from IWSM. HF8; 9, 5-10,4 In this, as in numerous other cases, Swisher translates only a portion of the memorial. I have consulted every entry in which Lay is mentioned in the IWSM. Where the item is given in Swisher, the entry will be designated, henceforth, as IWSM(S). Where my rendering is at variance, this will be noted.

24. ECC. p. 118.

25. IWSM. Balance of memorial cited in note 23 above, not included in Swisher. HF8, 10, 4-12, 5. The two following paragraphs are a loose paraphrase of the text.

crossed into the foreign settlement and their fire provoked a return of fire by the British. This was the version, naturally, that Stirling intended to send the Admiralty. For some unaccountable reason, he desired an official Chinese version that agreed with his own.

A version, in Chinese, was prepared by the Consular staff and was brought by Lay to Chi-êr-hang-a, with the "request" that an official copy of the draft be prepared for him to take back to Stirling. Without seemingly complaining about the substance of the draft, Chi-êr-hang-a countered by asking that the Chinese be allowed to prepare an edited copy; the draft, as it stood, was incorrectly written and poorly constructed. Lay insisted that it could not be edited, upon which he was told that in its draft form it was unintelligible.

Lay was not to be put off and declared that unless it was accepted as presented, Stirling might lose face. In this event, the Admiral might feel compelled to re-open hostilities, which in turn would disrupt the peaceful relations then existing. Lay subsequently got his "communication",²⁶ but he determined not to be embarrassed again. On

26. IWSM(S). pp. 213-215. Supplementary Edit. July 7, 1854. HF8; 13b, 8-14b, 10. I believe the document referred to, in English "translation", is in FO 97/100 No. 68 Bowring to Clarendon, June 27, 1854. Encl. No. 7. Hsu to Stirling ("translated" by Lay) June 22, 1854.

July 1, he wrote a memo to Alcock requesting permission to employ a "Chinese writer of superior ability to those now employed." Within a week, Bowring reported that such a person had been employed.²⁷

In a later section of this chapter further information will be presented to elaborate on the question of Lay's relations with the Ch'ing Authorities. It is necessary first to mark the change in his status which was effected by the results of the negotiations in which he took part.

Three basic results were: that the local Ch'ing officials concurred in the introduction of a degree of jurisdiction by the Treaty Consuls over the foreign settlements; that the Treaty Powers agreed to enforce more effective measures of neutrality; that agreement was reached for the introduction of foreign administration of the Shanghai maritime customs.²⁸

The last result affected Lay most immediately. The terms of the agreement called for the nomination by each of the Treaty Consuls, of one of their respective nationals, the three to act as a joint board of inspectors. To ensure that the Customs Administration would function under competent guidance and to prevent any suspicion of conflict of

27. FO. 17/213. No. 72. Bowring to Clarendon. July 6, 1854. Enclosing No. 55 to Alcock to Bowring, July 4, 1854, which, in turn, enclosed Lay to Alcock, July 1, 1854.

28. Fairbank "Trade". p. 450 ff.

interest arising, Alcock, with Bowring's approval, nominated Wade, his Vice-Consul.²⁹

The China Establishment was short-handed when Lay was posted to Shanghai as Acting Interpreter. It was now to be deprived of one of its most able members. Partly because of his high regard for Lay, partly because he must have expected the early return of two other experienced staff members (Meadows and Harvey³⁰), and partly because he knew that a number of supernumeraries were en route for China,³¹ Bowring approved Alcock's appointment of Lay as Acting Vice-Consul (in Wade's place) in addition to his assignment as Acting Interpreter.³²

Though expediency played some part in this decision, Lay had had the opportunities and had demonstrated his abilities. Aside from the activities already referred to, Lay had prepared a "Memorandum respecting the insurrectionary movement", based on data mainly derived from "Peking Gazettes." This impressed Bowring to the extent that he

29. FO. 97/100. No. 77. Bowring to Clarendon, July 7, 1854.

30. FO. 17/219. London Office memoranda between Nov. 1--7, 1854 indicates that both Meadows and Harvey were expected to start back for China before the end of the year. Each, on request, was given additional leave.

31. FO. 17/215. No. 124. Bowring to Clarendon. Aug. 26, 1854 announcing the arrival of four Supernumeraries, Morgan, Hart, Hughes and Swinhoe at Hongkong.

32. FO. 97/100. No. 77 op.cit.; No. 82, Bowring to Clarendon, July 12, 1854 and FO. 228/177. No. 58, Alcock to Bowring, July 13, 1854. Arrangements per No. 82 approved by Clarendon. FO. 17/211 No. 141. Oct. 10, 1854.

transmitted it to the Foreign Office.³³ It is also obvious that Alcock, while he did not record the specific fact, must have been satisfied with the way in which Lay performed his Consular duties.

Whilst Lay's appointment as Acting Interpreter had not been followed by overt resentment, two official complaints followed this one. M.C. Morrison, who had been sent as Interpreter to Canton when Lay was sent to Shanghai, made the only complaint against the specific decision. He indicated that by qualifications and seniority, he should have been selected as Acting Vice-Consul.³⁴ C.A. Sinclair at Amoy, who had been Interpreter since his employment in the service in December 1843, also complained through his Consul, Parkes.³⁵

Morrison's complaint was quashed by Bowring, whose action was approved by the F.O.³⁶ Bowring, however, felt that there was something to be said for Sinclair and referred the correspondence to the

33. FO. 17/214. No. 67. Bowring to Clarendon, June 27, 1854.

34. FO. 17/216. No. 133. Bowring to Clarendon, Sept. 8, 1854.

35. FO 17/215. No. 115. Bowring to Clarendon, Aug. 23, 1854.

36. FO. 17/211. No. 168. Clarendon to Bowring, Nov. [?] 1854. FO 17/226. No. 37. Bowring to Clarendon, Jan. 20, 1855. Before the FO's authorisation to send him to Shanghai reached China, Sinclair again complained at not having been appointed as Interpreter at Canton, which went to another younger man - W.H. Pedder, No. 4. B. to C. Jan. 3, 1855.

F.O. with a recommendation for promotion.³⁷ The number of complaints may have been kept to a minimum by the fact that Lay's salary does not appear to have been increased by his "promotion."³⁸ The complaints do suggest, however, that Lay was being viewed with disfavour by a number of his associates.

He did not have time to give much thought to such matters at Shanghai, where his talents were, at least, appreciated. This was the direct effect of both the immediate and subsequent results of the negotiations. It was true that many of the duties which Wade had to perform before the establishment of the foreign Inspectorate devolved upon the new agency when it went into operation. But the regular duties of the Vice-Consul were themselves heavy. Besides being charged with the direction of the "daily routine of the office", which included supervision of the servants, the Vice-Consul was

37. "Ibid". No. 184. Clarendon to Bowring. Dec. 8, 1854. A.W. Elmslie, who had been in the Service since its origin in 1842 and had never got a position outside Canton nor a more responsible office than Acting Consul, began a series of complaints about being overlooked commencing in May, 1854 (FO. 17/213/ No. 24). Bonham wrote a scathing memo about his lack of ability to the FO in July (FO. 17/214). Apparently on another direct appeal to London to be specifically considered for Shanghai, he was turned down (FO. 17/219. Unnumbered. Hammond to Elmslie. Oct. 6, 1854).

38. No mention of additional salary is made in the despatches affecting his new appointment. It is also relevant, that at a later date when requesting some back pay due to him, he asked that it be at the Canton Interpreter's rate (£700) though he did not report to Canton. For citations vide postea Ch. VI p. 134 n.23-25.

responsible for the local correspondence respecting shipping, customs, etc. He was further required to look after the "custody, maintenance and discharge of prisoners".³⁹ The expanded responsibilities that accompanied the acquisition of fuller jurisdiction over the foreign settlement meant that the Vice-Consul's labours were henceforth heavy throughout the year. They were no longer keyed to the simple ebb and flow of the trading season. When it is also recalled that the negotiations led only to proposals for more effective measures to enforce neutrality and that these were still to be implemented, it is clear that Lay had sufficient work to keep him fully occupied.⁴⁰

There was an indirect consequence of the negotiations that had an important bearing on Lay's career. The weight of the balance of "neutrality", in diplomatic terms and as applied to the local situation at Shanghai, which tended to favour the rebels, now shifted in favour of the Ch'ing Authorities. On the one side, a formal triangular liaison was created between the Consulates, the foreign Inspectorate

39. The normal duties of the Shanghai consular staff, in a "normal" period, were outlined by Alcock in 1853. FO. 228/161. No. 4, Alcock to Bowring, Jan. 30, 1853.

40. FO. 17/227. No. 59. Bowring to Clarendon. Jan. 30. 1855. Encloses No. 15, Alcock to Bowring, Jan. 23, 1855. (Quoted in part, pp. 123-124).

and the Ch'ing Administration. On the other side, viewing the trade of the port as a whole, most advantage was to be gained by negotiating with the Ch'ing Authorities. It should be stressed that "neutrality" was still the real as well as the nominal policy. Until the end of 1854, amicable relations were maintained between the rebel leaders and the British officials.⁴¹ However, because the Shanghai rebels exercised no control over the hinterland trade and because the leaders proved incapable of developing a responsible administration in the area they did control, they gradually lost the sympathies of the local British consular and naval officials.

In the pursuit of his official consular duties with his characteristic intensity and energy, Lay became more and more identified with the Imperial cause. From July to October 1854, his behaviour may be taken as the ordinary, conscientious response of a young man seeking to justify the favour shown towards him. From the beginning of October, when Wade announced his intention to resign as British Inspector,⁴² the motivation for this conscientiousness was looked upon as ambition to succeed to this lucrative post.

41. See particularly exchange of correspondence between "Lew-le-ch'üen ." (Liu-Li-ch'üan), one of the "Small Sword" leaders and Lay. In FO. 228/177, enclosures in No. 85 and No. 88, Alcock to Bowring, Nov. 14 and 18, 1854.

42. FO. 228/166. No. 172, Bowring to Clarendon, Oct. 9, 1854. Enclosing notice of Wade's intention to resign.

The issues related to Wade's decision will be considered in detail in the next chapter as part of the background to Lay's appointment. The separation of the issues effected here is arbitrary for it would be impossible to demonstrate that Lay's behaviour was not influenced by the prospective opening. But it is also undeniable that Lay's behaviour was, on the whole, consistent with the policy Alcock felt himself compelled to follow and which, just as consistently, received Bowring's approval.

Alcock's determination to back up Wade (and the other Inspectors) in customs matters aroused strong feelings against Lay, who was the intermediary for much of his correspondence, as well as himself. No amount of assurances from Alcock or Bowring to the Foreign Office that the system was a boon to trade and the "honest trader", could disguise the disaffection and antagonism felt by some segments of the public.⁴³

The nature of the feeling toward Lay was expressed in the derisive

43. Complaints appear regularly in the correspondence in the "NCH" during the latter part of 1854-55. One of the more vociferous of the complainants, Sillar Bros., carried on a running attack, through London, from December 1854 through the fall of 1858 (cf. FO. volumes on "Shanghai Duty Question"). Also cf. S.F. Wright, "China's Struggle for Tariff Autonomy: 1843-1938", (Shanghai, 1938) p. 134. (Hereafter cited as: Wright, "Tariff").

nickname applied to him - the "Boy Consul".⁴⁴ The events leading to the "evacuation" of the native city by the rebel forces, beginning with the determination of the French officials to end the harassment of their section of the foreign settlement, brought the hostility towards Lay to its greatest intensity.

During November and December 1854, the French attempted to dislodge the rebels by armed assault. The first attempts failed because the forces at their disposal were very small, because initially the British and American officials refused to cooperate in their policy, and because the first assaults were met by a spirited and determined opposition from the rebels. In time, Alcock overcame the reluctance of Admiral Stirling by arguing that the Anglo-French alliance in Europe committed the English to cooperation in China.

One phase of this cooperation apparently induced Alcock to expose himself at the "front".⁴⁵ The incident elicited an open letter to Alcock, published in the "North China Herald", signed by "Censor". After chiding Alcock that the personal risk was his own affair and "laying aside the complicated bearing of this act upon [the officials']

44. King, op.cit. p. 49.

45. NCH. No. 324. Jan. 20, 1855, p. 101. The incident is probably the one referred to in [John Scarth] "Twelve Years in China". (Edinburgh, 1860), pp. 211-212.

professedly neutral attitude towards all belligerents", the writer adds that it cannot be ignored by the public for

it has to be considered that any chance bullet depriving them of your presence must for some considerable time at least leave their fate in a most critical conjuncture in the hands of an inexperienced lad, your only assistant and representative. It is true they may complain of some of your acts, but they have certainly no desire for such a change of masters as this. A change of measures would be preferable to a change of men at all; and failing this, they prefer enduring an evil of whose extent and nature they know something to wishing for a guardianship which of the two may prove much the worse and can hardly in any case be much the better.⁴⁶

In the following issue "Jack Lackland" came to Lay's defence. He wrote that the British officials (Wade was also involved in the incident) "are doing remarkably well", and continued

The Acting Vice-Consul could console himself that the great Chatham shared with him, and defended, the atrocious crime of being a very young man; the ex-Vice, that he was responsible for his activity, pernicious or otherwise, to constituted authority.⁴⁷

Perhaps stung by his critics, perhaps challenged by his supporters and perhaps stimulated by an unusual favour shown him by Chi-êr-hang-a in the interim,⁴⁸ Lay outdid himself in the final phase of the breaking

46. NCH. No.234, op.cit. p. 101

47. NCH. No.235, Jan. 27, 1855. p.105.

48. A strong letter, signed by Chi-er-hang-a, written to Bowring in support of Lay's nomination to the Inspectorate, is dated Feb. 15, 1855. (FO. 17/227. No. 95, Bowring to Clarendon, Feb. 22, 1855. Encl.I.). The action resulting in the recapture of the native city took place Feb. 17-18.

of the siege. The rebels were completely surrounded and the only escape route was through the foreign settlement. There was no hope of a mass escape, but a group of foreign residents, partly as repayment for the profitable relations they had had with the leaders, and partly on humanitarian impulse, tried to assist the leaders to escape.

Lay, leading a group of British marines and Imperial soldiers, as much in the role of Commander as of interpreter, led the pursuit which terminated at Woosung. Lay officiously used his authority to gain entrance to search foreign houses and godowns.⁴⁹ One of the principal rebel leaders perished. The other, although reported killed by the Ch'ing Authorities, made good his escape.⁵⁰

The consternation, particularly in the British community, was intense. It was not simply Lay's aggressiveness that was found objectionable. But the whole idea, that British officials would co-operate in an enterprise that could only end in an exercise of wholesale executions by the Imperial forces, was repulsive. On the first point, six months after the event, on an occasion when Lay was charged with threatening the "Indian residents" with "domiciliary visits to

49. IWSM. HF 10; 33, 9-34b, 4. Chi-êr-hang-a memorial. Received May 11, 1855. [Scarth] op.cit. p. 217

50. FO. 17/231. No. 198. Bowring to Clarendon, June 1, 1855.

search for and seize opium on their premises", a correspondent to the NCH commented:

but there must surely be some mistake in this, or Mr. Lay must hold his life at even less value than the community do, as he must be aware, that, though while Acting Vice-Consul he might under certain circumstances, enter the house of a British resident by force, now that he has degenerated into a Chinese Custom-Officer, he might be shot for such an act, with a little ceremony as any other objectionable arrival that intruded.....⁵¹

To emphasise his meaning he also mused that under American custom, a person who behaved this way "would be lynched forthwith and perhaps scalped in addition."⁵²

The British officials were probably sensitive to the public's reaction. In any case, when Chi-êr-hang-a invited those who had cooperated in the expulsion of the rebels to "a grand breakfast" ten days after the re-capture of the native city, whilst the French and Americans attended, "the British Consular Authorities, and a few others....for some cause did not attend."⁵³

If the British Officials were unpopular with their compatriots and other foreign nationals, they had the approval of the Ch'ing Authorities. In addition to the banquet cited above, Chi-êr-hang-a

51. NCH. No. 264. Aug. 18, 1855. Letter by "Ithuriel", p.11

52. Loc. cit.

53. NCH. No. 240, March 3, 1855. p.124.

wrote to Bowring that as a consequence of his report of the incident and the part played by Alcock and Lay, to the Emperor, the latter had enquired whether they could receive some mark of recognition. The two declined because it was contrary to the terms of their service.⁵⁴ In the round of correspondence that followed, the actions of both were approved and their rejection of recognition commended by the Foreign Office as well as by Bowring.⁵⁵

In Lay's case, Chi-êr-hang-a was able to effect his purpose in two ways. He continued to give unshakeable support to Lay's appointment as Wade's successor in the Inspectorate, despite Bowring's continuous opposition. He also cited Lay favourably in a memorial he wrote reporting the acceptance, by the French officials, of marks of recognition for their part in the recent campaign.⁵⁶

Whatever Alcock's private view of Lay's personality and character may have been, the official records indicate that he had the highest

54. FO 17/230. No. 171. Bowring to Clarendon, May 17, 1855. Enclosures contain exchange of correspondence between Chi-êr-hang-a and Bowring. I have not located any reference to this specific subject in the IWSM.

55. Loc. cit. Clarendon pencilled a note on Bowring's despatch "Entirely approve. Should express to Keih [sic] gratification of HMG at the intended favour." Notice of FO's approval was sent to Lay: "FL". Shanghai. Misc. No. 190. Robertson to Lay, Nov. 12, 1855.

56. IWSM. Included in memorial cited in note 49.

regard for his work as a public servant. Before the action against the rebels, when Alcock again appealed to Bowring for additional personnel - this time for a Vice-Consul - he noted that the absence of a Vice-Consul had "entailed a very serious increase of labour on those who remained, but especially on myself and Mr. Lay, acting in [a] double capacity....." He had also written in his request of the previous April (1854) that

the work of this office is more than one person in those two capacities can possibly perform with justice to himself or the public service....But in justice to those who have of late been working with me, I am bound to state to Your Excellency, that nothing but the most hearty & zealous co-operation on their part could have prevented the accumulation of arrears of the most hopeless kind; or enabled me to keep the business of the office from getting into a state of great confusion.⁵⁷

Some time after the action against the rebels, Alcock was even more specific in his praise. In writing to Bowring that he was granting a month's leave to Lay on the latter's request, Alcock reported

In doing so, Y.E. will perceive I availed myself of the opportunity of recording the high sense I entertain of the zeal, ability and unwearied diligence with which he has, while under my orders, devoted himself.....to the public service. Believing it is everyone's duty to do his utmost....I am not in the habit of calling attention particularly to the circumstance, - but the long protracted period of Insurrection and trial....at this Port has been altogether exceptional,

57. FO. 17/227. No. 59, Bowring to Clarendon, Jan. 30, 1855. Enclosing Alcock's No. 15, Jan. 23, 1855.

and called for unusual exertions, especially on the part of the Interpreter charged, in addition, with the duties of Vice-Consul; and it is but a simple act of justice to give Mr. Lay the credit, who has so satisfactorily discharged the trying duty of both offices.⁵⁸

Lay's activities in connection with the temporary shift in the balance in favour of the Ch'ing government thus brought him into favour with those officials - Ch'ing and British - who were in a strong position to promote the next advance in his career. But this advance was not achieved easily. Partly because it was in order that Lay should be transferred from Shanghai, and partly to obstruct his appointment to succeed Wade, Lay was posted to a new assignment.

An extension of home leave to T.T. Meadows, who had also rejected the Foreign Office's offer to him to become Chinese Secretary in place of Medhurst,⁵⁹ provided Bowring with an opening to satisfy both of his objectives with respect to Lay. He quieted M.C. Morrison by appointing him as Acting Chinese Secretary. Bowring expected Wade to take up this position, at which point Morrison would become Assistant Chinese Secretary - a promotion in prestige if not in remuneration. Lay was posted to take Morrison's place as regular Interpreter at Canton.⁶⁰

58. FO. 228/195. No. 48. Alcock to Bowring. April 7, 1855. Also enclosing copy of his letter to Lay of same date.

59. FO 17/219. Office Memoranda about No. 1-7, 1854.

60. FO 17/227. No. 70, Bowring to Clarendon, Feb. 3, 1855. Only a month earlier Bowring had recommended that W.H. Pedder be posted to Canton. FO 17/226. No. 4, Bowring to Clarendon. Jan. 3, 1855.

This shift in position would mean that Lay would have received a substantial increase in salary (from £500 to £700) and that he would be removed from Shanghai so that he could not press his own candidacy for the Inspectorate. The appointment was recorded in February, 1855.

It is not feasible to formulate general conclusions about the progress of Lay's career for the period covered by this chapter. Such conclusions would have to take into account factors that led to his appointment as British Inspector. These have not yet been dealt with adequately. Some limited conclusions specifically related to this phase of his career in the China Service can, however, be suggested.

It may firstly be noted that, in the exceedingly trying conditions which prevailed at Shanghai, Lay, youthful as he was, responded to the demands made upon him. His training and his temperament enabled him to carry out his duties and responsibilities in such a manner as to gain favourable notice from the Ch'ing Authorities as well as from his own superiors.

Secondly, Lay had the good fortune to become a principal participant in the formulative developments affecting a new stage in Sino-British relations. By virtue of his special ability as an Interpreter, he not only became an important link in the intercourse between the British and Ch'ing Authorities, but he also became an Interpreter in a broader sense. In this period, he was beginning to be considered as a "sounding board"

by both sets of authorities.

Thirdly, the notice he received for his efforts and for his energy generated hostility against him, as well as commendation for him. Senior members of the Service and a large segment of the foreign community were unsettled by the relatively meteoric rise in his "fame and fortune". Lay was not always directly responsible for the opportunities that emerged, but there is nothing to indicate that he ever hesitated taking advantage of them when they were available.

Lastly, the range and extent of his official and quasi-official activities continued to leave little time for non-vocational interests. Even when he had free time, according to Wade, at the beginning of 1855, Lay was assisting him in composing "a vocabulary of the Peking Dialect."⁶¹ His preoccupation with his vocational interests advanced his professional career, but the process did not include development in social maturity.

The foregoing conclusions have been characterised as "limited" with good reason. Some of them are subject to qualification in the light of the events that led to Lay's investiture as British Inspector of Shanghai Customs. These events can now be dealt with as part of the general account of Lay's career in the first phase of his service as a Ch'ing official.

61. FO. 17/227, No. 59 op.cit. Enclosure: Wade to Alcock, Jan. 22, 1855.

Chapter VI

In the Emperor's Service: 1855-1858.

Within the limited sphere of British interests, H.N. Lay's role as a British official at Shanghai was that of a subordinate, in large part fulfilling the tasks assigned to him by his superiors. Thus, while he was a participant in events of some importance during much of 1854 and the early months of 1855, his role could not be described as significant.

Various factors connected with the first phase of his career in the "Emperor's Service",¹ however, provided increasing opportunities for Lay to exercise his own initiative. His role developed, correspondingly, in significance. The developments leading to his investiture as British Inspector, the functions he fulfilled as a member of the inspectorate and the impact of his activities, unofficial as well as official, had important consequences for both the British and the Chinese.

As for the first set of developments, reference has already been

1. In the Chinese scheme, the use of this expression might be questioned since the records provide no evidence that the Shanghai arrangement for use of foreign "inspectors" was ever brought to the attention of - let alone sanctioned by - the Emperor. In the few instances between May, 1855 and Feb., 1858 when Lay is mentioned, he is not given any title and his Chinese name is preceded by the customary k'ou (口). Vide Chapter VII, n. 73.

made to the fact that T.F. Wade, as early as October, 1854, had notified his intention to resign as British Inspector.² His decision was taken for entirely personal reasons and it does not appear that he even seriously thought, at the time, of whether or not there was anyone eligible to succeed him. Partly because there was a shortage of qualified staff in the Establishment and partly because Bowring insisted that Wade had to provide three months' notice, Wade deferred his resignation. He could not afford to alienate Bowring's support, for one of Wade's expectations was to be re-instated in the Consular Service.³

Little was done about the question of Wade's successor until the turn of the year. E. Hammond, who had recently become Permanent Under-Secretary in the F.O., and who was directly concerned with China affairs, was not enthusiastic about Wade's attitude. In January, however, Wade decided that he would resign at the end of April whatever the F.O. finally decided.⁴ His determination was fortified by the knowledge that in his view, supported by Alcock, there was a qualified

2. Vide antea: Chapter V, p. 42 n. 42.

3. FO. 228/166. Wade's memo enclosed in Bowring's No. 172 Oct. 9, 1854.

4. For the general reaction of the FO to Wade's behaviour see notations on despatches and intra-office memos in FO 17/224 and FO. 97/100 most of which are reproduced in Fairbank, "NSEQ" pp. 132-134.

person - H.N. Lay - available to take his place.⁵ The evidence that Lay was a candidate for the post thus seems to have been transmitted to Hongkong for the first time early in February, 1855.⁶

In the preceding chapter it was noted that Bowring sought to use the tactic of promoting Lay to the Interpretorship at Canton as a means of thwarting Lay's succession to the Inspectorate.⁷ Bowring professed to be opposed to Lay because of his youthfulness and limited experience, but it was also beyond question that he had committed himself rather strongly to the candidacy of W.R. Gingell.⁸ Bowring advised both London and Shanghai early in February of his plans for Lay⁹ and although he used every means at his disposal to prevent Lay's succession to Wade, the forces arrayed against him defeated his purpose.

In the first place, Bowring could not insist that Lay take up immediately his new post at Canton. A replacement for him at Shanghai was not available and it was more logical for Lay to leave with Alcock, whose move to Canton as Consul had been periodically postponed since early 1854.¹⁰

5. FO 17/227. No. 59. Bowring to Clarendon, Jan. 30, 1855. Alcock's No. 15, 23 Jan. 1855 encloses Wade's notice to Alcock of 22 Jan.

6. FO 228/195 No. 21. Alcock to Bowring, Feb. 14, 1855.

7. Vide antea Chapter V pp. 122-124.

8. FO 17/227 No. 70 Bowring to Clarendon, Feb. 3, 1855.

9. FO 17/227 loc.cit. and Fairbank "NSEQ" pp. 138-39, citing FO 17/244 No. 38 Bowring to Clarendon, Jan. 26, 1856.

10. FO. 17/213. No. 16. Bowring to Clarendon, April 28, 1854.

Secondly, Bowring could not break down Wade's and Alcock's support for Lay's appointment to the Inspectorate. In proposing Lay, Alcock wrote:

I would suggest....if an interpreter can be spared, the expediency of nominating Mr. Lay, in preference to any other person. From his services here.....he has had the means of acquiring a familiar acquaintance with many local details as to Customs House Administration and past events, without which it would.....be difficult for anyone however able, to discharge the duties of the office satisfactorily. I may add, that the zeal, discretion and ability he has demonstrated while very much over-worked.... have been such as to give good warrant of his success in the office of Inspector.¹¹

Wade, despite the fact that he was anxious to be relieved, at Alcock's request, first delayed his formal resignation until April 30 and, ultimately did not tender his resignation until May 30, when it was certain that Lay would succeed him.¹² In addition, not until Alcock granted Lay's request for leave (one of Alcock's last official acts as Shanghai Consul) - enabling Lay to remain in Shanghai - did Alcock notify Lay officially that he was to proceed to Canton.¹³ The

11. FO 228/195. No. 21 Alcock to Bowring, Feb. 14, 1855.

12. FO 228/195. No. 50 Alcock to Bowring, April 9, 1855.

13. Vide antea Chapter V n. 58. In his single letter to Lay, Alcock a) granted his leave and then b) officially informed him of his new post. Of even more significance is that Bowring's despatch to Alcock posting Lay to Canton was dated March 12, 1855, the day before Bowring embarked from Hongkong for Bangkok. (FO 17/228. No. 136, Bowring to Clarendon, March 12, 1855. FO 230/54 [letter Book - Hongkong to Shanghai] No. 53 Bowring to Alcock, March 12, 1855.

force of this proceeding is only to be understood in the light of the fact that Bowring's formal despatch¹⁴ making the appointment must have been received by Alcock ten days or more prior to his notice to Lay.

Thirdly, Wade and Alcock countered Bowring's opposition by striking him in a vulnerable quarter. They professed to have canvassed the mercantile community with the result that, in March, Alcock reported:

Under the circumstances, having also ascertained with considerable certainty, that the objections your Excellency anticipated with the Community here, in regard to Mr. Lay's youth and supposed inexperience, would not be entertained; & that the merchants themselves looked forward with distrust to the appointment of a stranger to the Port, & were on the other hand well disposed towards Mr. Lay, as by far the most eligible successor to Mr. Wade which could be given them:.....¹⁵

As this despatch must have reached Hongkong during Bowring's absence, he was saved the embarrassment of seeming to oppose the views of the small, but influential portion of the community which was usually sympathetic to his policies. This testimony, coming so shortly after the revulsion felt against Lay¹⁶ in part reflects the division in the Shanghai community and in part attests to the strangeness of Lay's character. When Bowring did return and was forced to reach a decision,

14. FO 230/54 [Letterbook: Hongkong to Shanghai] No. 53
Bowring to Alcock. March 12, 1855.

15. FO 228/195 No. 29 Alcock to Bowring. March 8, 1855.

16. Vide antea Chapter V p. 120

this report added another mark against his own nominee, whilst adding a strong mark in favour of Lay.

Finally, whether or not Lay from the outset harboured the ambition to succeed Wade, once he was formally entered by Wade and Alcock as a candidate, he worked to bring the influence of the Ch'ing Authorities to bear on Bowring. As a result of the associations which he had built up with the Ch'ing Authorities, Lay was able to persuade Lan Wei-wen, the acting taotai for Shanghai, and Chi-erh-hang-a to address a formal communication directly to Bowring¹⁷ to

17. The evidence that Lay made a direct solicitation for Chinese support for his application is substantiated by only one documentary source: a memorial of Ho Kuei-ch'ing (who was Governor of Kiangsu in 1855 and Governor General of the Liang Kiang from 1856) which reached Peking Aug. 2, 1858 [Fairbank, NSEQ, p. 142, gives the correct date of receipt in a footnote, but states in the text that the memorial was sent in July 1855. An obvious typographical error] specifically states that Lay "in a personal interview" made the request. IWSM. HF 29:23,3 - 23b,3. In identical passages, Wright in his "Tariff" p. 134 and "Hart" p. 112, states that the intervention was at "Lay's own request", but in neither text is a relevant source cited. That Lay did have direct access to Chi-erh-hang-a is confirmed by the latter's letter in which he writes, "During more than a year I have been at Shanghai, in the intercourse I have had with Mr. Lay, I have found him to be well versed in the state of mercantile relations....and acquainted with the language and writing of China, moreover an enlightened person and one on whom perfect reliance can be placed." FO 17/227 No. 95 Bowring to Clarendon. Feb. 22, 1855. Enclosure Keih [sic] to Bowring (Morrison's translation).

support his appointment.¹⁸ Bowring wrote directly to the Ch'ing Authorities presenting his reasons for opposing Lay's appointment, but in the meantime Lay had further ingratiated himself with these officials by the part he played during the expulsion of the insurgents from the native city at Shanghai.¹⁹ In his letter, Bowring did give himself an out, since he concluded:

But I have no intention or wish to interfere with the arrangement which your Excellency and Mr. Consul Alcock may deem most desirable, - and have stated my opinion that Mr. Gingell's appointment would, on the whole, be more satisfactory than that of a gentleman so much his junior in age and standing - I shall not refuse my consent to the acceptance of the office by either of the parties whom you may please to appoint.²⁰

In the same despatch in which Alcock reported the views of the merchants, he also reported that in an interview with the Ch'ing Authorities after the transmission of Bowring's reply, the officials were still determined in their support for Lay.²¹ As suggested, it is unlikely that Bowring saw this despatch until mid-May. By that time, Alcock had reached Canton and was able to give additional force to the arguments in Lay's favour.

In the context of his transfer from the Consular Service to the Emperor's Service, therefore, Lay's duties at Shanghai terminated on

18. Loc.cit. Also includes copy of Bowring's reply.

19. Vide antea. Chapter V p.119 and n.48

20. FO. 17/227. No. 95 Enclosure. Bowring to Chi-erh-hang-a. Feb. 22, 1855.

21. FO. 228/195 No. 29 op.cit. (n.15).

April 9, 1855 the day Alcock turned over his office to his successor, D.B. Robertson. Robertson was accompanied by C.A. Sinclair, who had been designated by the Foreign Office to take over from Lay.²² Lay subsequently claimed that on Alcock's verbal instructions, he continued to fulfill Consular duties at Shanghai as long as Alcock remained in Shanghai, that is, until the end of April, and that his month's leave was therefore in effect from May 1.²³ Although Lay's claim was suspect because Alcock actually left Shanghai on April 19, it was not repudiated by Alcock.²⁴ It was ultimately accepted by the Foreign Office and Lay was paid salary from April 9 to May 31, 1855, at the rate for the Canton Interpretorship!²⁵

Lay had been forced into the expedient of extending his "leave" because Bowring was absent from Hongkong. From mid-March to mid-May Bowring was visiting the small kingdoms of South East Asia for the purpose of negotiating treaties with their rulers. It was not until he returned

22. FO. 17/211. No. 184, Clarendon to Bowring. December 8, 1854.

23. FO. 228/230. No. 107. Robertson to Bowring, June 30, 1856. Enclosing Lay to Robertson, June 7, 1856.

24. NCH. No. 249. May 5, 1855. p. 161. Alcock commenced his duties at Canton on May 5, 1855 (FO. 17/228 Sp. No. 24, Woddgate to Hammond, May 9, 1855), which is further evidence that he left Shanghai before, as Lay stated, "the last day of April."

25. FL. Shanghai No. 218. Harvey [VC] to Lay, July 22, 1856.

to Hongkong and discovered that he had been out-manoeuvered that he bowed to the inevitable. Lay, on his part, had been determined not to resign from the Service and had refused to take Wade's place without Bowring's approval. This was conveyed to Lay at Shanghai on May 30.²⁶ On June 1, he notified Robertson that on Wade's resignation as of May 31, he had taken up the duties of British Inspector.²⁷

As the foregoing phraseology suggests, Lay did not consider that he had left the China Service, but rather that he had been seconded to the Inspectorate. Bowring was inclined to give qualified support to this interpretation of the British Inspector's status, but the Foreign Office took a different view. Even though Lay was subsequently forced to accept the fact that he had "retired",²⁸ he maintained in later years that he had not become detached from the Service.²⁹ The clarification of this matter by means of lengthy correspondence between China and London seriously affected Lay's early months in his new career.

26. FL. Shanghai No. 52, Robertson to Lay, May 30, 1855.

27. FO. 17/231 No. 203. Bowring to Clarendon. June 7, 1855. Enclosing Robertson's No. 14, June 1, with Lay's letter as enclosure No. 3

28. In his letter of June 7, 1856 (vide antea n.23) pressing for his back pay, Lay used the expression "I ceased to belong to H.M.'s Service on the 1st of June 1855."

29. FL. In the printed application for a C.B. that Lay submitted to Lord Palmerston, dated November 26, 1862, he recorded the following "....I was informed that my acceptance of this office would not debar me from re-entering the Consular Service at any future period. So long as I held the post of Inspector of Customs, I regarded myself and was looked upon by the British Authorities, as still belonging to the Consular Service....."

Before continuing with this subject, some notes on the early developments related to the system may be helpful. J.K. Fairbank and S.F. Wright, in their extensively detailed studies, deal with the conditions that led to its introduction.³⁰ They describe the manner in which insurgency - Taiping and localised forms - disrupted the patterns of trade; the venality of Ch'ing officialdom; the chaos and anarchy consequent upon the incompetent, inefficient and ineffectual administration of the maritime trade by the Ch'ing government; the helplessness of responsible foreign officials - partly because of the multi-national make-up of the foreign community and partly because, in fact, they lacked valid legal jurisdiction - who attempted to bring order out of chaos; the predatory behaviour of many of the foreign merchants, taking advantage of the situation through use of bribery, smuggling and any and every form of unscrupulous practice. They also show how the desperate need of the local Ch'ing Authorities for revenue and the realisation among merchants with long-term interests of the need for order, were used by the officials of the major powers (Britain, the U.S. and France) to bring about the system of joint sino-foreign customs administration.

These were undoubtedly the basic conditions affecting the development of the system. Yet, in this particular study on Lay's career, the

30. Especially Fairbank, "NSEQ" and "CSPSR" Vols. XVIII: 4, XIX: 1 and 4 and XX:1; Wright, "Hart". Morse, "Conflict", Ch. XVIII and "Submission", Chs. I and II, also contain much useful information.

emphasis falls on other aspects of the early period of the Inspectorate of a more limited character. These aspects (also, of course, dealt with to some extent by Fairbank and Wright) are related to the political and legal status of the inspectors and the Inspectorate once it came into being.

The foreign Inspectorate had been in operation less than a year when Lay - six weeks short of celebrating his 23rd birthday - succeeded Wade. It had been brought into existence in time to operate for the heavy trading season of 1854, so that Lay joined the "Staff" just as another heavy trading season was approaching. At its inception, the three foreign inspectors selected by the major Treaty Powers had been M. Arthur Smith, T.F. Wade and Capt. Lewis M. Carr for France, Britain and the United States, respectively. All three had been connected with their respective consular establishments.³¹

By common, but unspecified agreement, since all the Inspectors received the same salary and were technically of equal status, Smith was initially deferred to as the senior member.³² The reason for this was that Alcock had originally sought to have only one - French - inspector appointed, partly for reasons of economy and partly because the French, having the smallest trading interest, might be more strongly

31. Fairbank, "CSPSR" xx:1 p. 70. Smith, however, was not a regular member of the consular staff, having been pressed into service against his wishes. Cf. C.B. Maybon and Jean Fredet, "Histoire de la Concession Francaise de Changhai"(Paris, 1929) p. 59 note (2)

32. NCH. No. 235. Jan. 27, 1855. p. 105.

motivated to institute an impartial administration. Smith was a mild-tempered, retiring man who, like Wade, was primarily interested in pursuing sinological researches.³³ He carried on active functions for at least the first few months after Lay's appointment but because of poor health and because, perhaps, of Lay's more assertive personality, he seems to have curtailed his participation in the direction of customs affairs up to the time of his death in September, 1857.³⁴

Shortly after Smith's death, the French Consul, M. de Montigny, appointed his Vice Consul, M.B. Edan, to succeed him.³⁵ The latter was completely lacking in language qualifications. However, he appears to have fulfilled some function and continued to hold the post until it lapsed when the Shanghai system was superseded by the provisions of the Treaty of Tientsin.

Some information has been given about Wade and more will be presented when the functions of the Inspectorate are considered in detail. It may be well to note here, nonetheless, that during this period in his career, Wade demonstrated characteristics of the pugnacity and assertiveness (towards both merchants and Chinese), which were familiar traits that developed among those who served with Alcock. This is not the

33. Maybon and Fredet, op.cit. p.59

34. Loc.cit.

35. Jean Fredet, "Quand la Chine s'ouvrait...." (Shanghai, 1943) p. 284, claims Edan did not accept the post until 1858, but he was not always precise in his citation of dates.

place for an elaboration of this point, but Wade, Harry Parkes and H.N. Lay, all of whom demonstrated similar traits, are but the most obvious of those who served under Alcock.³⁶

The major qualification of Capt. Carr, the first American Inspector, may possibly have been the fact that he was free of any connection with any of the American mercantile interests. Lacking knowledge of the language and experience in commercial enterprise, he was at least noted for his urbanity. The record of his activities in Shanghai is obscure, except that he appears to have left the city, shortly after Lay joined the "staff",³⁷ without any clear plans for the future.

Carr's behaviour served indirectly to foster a personal antagonism between the Rev. Dr. Peter Parker (who had lived in China as a medical

36. All three were also products of Rev. K. Gutzlaff's training.

37. T. Dennett, "Americans in Eastern Asia" (Reissue: New York, 1941) p. 228, suggests by indirection that Carr did not leave until 1857. However, "NCH" No. 270, Sept. 29, 1855, p.34, "Where is Mr. Carr? Has he left his post definitely?" A letter from a group of American merchants to Commissioner Parker, dated Aug. 5, 1856, states, "no American Inspector has officiated for the last year." This and other U.S. records, cited from Records of the U.S. Department of State are to be found in China: The Maritime Customs. "Documents illustrative of the Origin, Development and Activities of the Chinese Customs Service." Vol. VII, "Despatches, Memoranda, etc....." (Shanghai, 1940) (Hereinafter cited as "CMC" with relevant volume number) p.22 ff.

missionary, translator and chargé d'affaires), and Lay, and to provoke Parker to side with the American merchants who opposed the Inspectorate.³⁸ Parker had received the appointment while on home leave as American Commissioner to succeed Robert M. McLane. Soon after his return to Hongkong, Parker advised the Vice Consul at Shanghai that during a visit with Carr in London, Carr had told him that he "probably will not return."³⁹ On this information, Parker nominated his Private Secretary, David Olyphant Vail, a grandson of the founder of one of the more prominent merchant houses, to succeed Carr.⁴⁰

Parker subsequently asserted that Vail and other "suitable persons" were rejected by the Superintendent⁴¹ "under pretences worse than frivolous."⁴² There is no evidence of what the "pretences" were. In the first instance, as implied by the preceding paragraph, the reason may have been based on technical grounds. Parker's personal knowledge

38. "CMC VII" Parker to American merchants. 25 Aug. 1856. pp. 32-34.

39. "Ibid" Enclosure, Parker to W.L. Marcy, Desp. No. 3, 25 Jan. 1856. "Exhibit A". Parker to M.W. Fish. 25/1/56. p. 24.

40. Loc.cit.

41. "CMC VII" Parker. 25 Aug. 1856. op.cit. The Superintendent was the Taotai Lan Wei-wen (See portea, n.115)

42. Loc.cit.

of Carr's probable plans could hardly be binding on the Inspectorate officials.⁴³ From the time intimation of Carr's resignation was received in Shanghai - early February, 1856 - until an exchange of formal correspondence could take place confirming the resignation, six months might pass.

As it was, just about six months after Parker's first attempt to appoint a successor, and in the midst of another intensive campaign against Lay and the Inspectorate system, a replacement was named. The Shanghai Vice-Consul, Dr. M.W. Fish, was appointed by the Ch'ing Authorities, apparently without official reference to Parker. The choice of Fish was criticised because of his limited qualifications,⁴⁴ but he also had supporters in the mercantile community.⁴⁵ He retained the post, like Edan, until the system was transformed in early 1859.

Two things are clear from this review of the roster of inspectors who held office in the early period. Firstly, there was always at least one other inspector acting jointly with Lay during his tenure,

43. Cf. Fairbank, "NSEQ" p.127, quoting from T.F. Wade memo in FO. 17/247 enclosure in No. 171 Bowring to Clarendon May 19, 1956, that the inspectors were required to give a bond reading in part "not to vacate such office, save and except, in case of sickness, incapacitating, without three months clear notice, in writing of such intention, under penalty of £. 500."

44. "NCH" No. 317, Aug. 23, 1856. p.14.

45. "Ibid". No. 318, Aug. 30, 1856 p.18.

while for two and a half of the three and a half years of this tenure, there was a full staff of three inspectors. Secondly, the British Inspectors, Wade and then Lay, were in a special position vis à vis the Ch'ing Authorities. Because of their language proficiency, limited as it may have been, they had a direct and continuing relationship with these officials. This experience gave them a qualification regarding knowledge of Ch'ing officialdom which was unique among foreigners in China at the time.

A different aspect of the structure of the Inspectorate that undoubtedly affected Lay's career, along with his attitude as to his status in the foreign community, concerns the salary stipulated for the inspectors. When the agreement was drawn up in 1854, the amount specified was six thousand dollars, local currency⁴⁶ - consistent with the fact that the inspectors were to be considered employed in the Chinese Service. Based on anticipation of normal rates of exchange, this salary would have been the equivalent of roughly £1,450⁴⁷ - a substantial advance on the salary rate for the British Vice Consul at Shanghai, but less than the rate for the Consul.

If paid in one of the local currencies - the Carolus Dollars, which

46. FO 97/100. No. 77 Bowring to Clarendon. July 7, 1854.
Enclosure No. 4 Woo to Consuls, 4 July 1854.

47. For basic information on exchange values and fluctuating rates see Morse, "Conflict", p.457 ff. especially graph facing p.470.

was "legal tender" for official transactions through the first quarter of 1857 - the real value in terms of Sterling would have been about £1,800 in July, 1854. Instead, however, of the exchange rate reverting to the level prevailing prior to the rebel disturbances, the Carolus Dollar continued to appreciate. By June, 1855, the Sterling value had reached about £1,950 and the value of the annual salary of the inspectors for the next two years may have averaged above £2,000.⁴⁸ When it is also taken into account that the salary scales for British Consular personnel were set in Sterling and that they were adversely affected by the appreciation in local currency, the disparity between salary levels was even more pronounced.⁴⁹

The inspector's salary was thus a generous one for a public servant - particularly for a person like Lay who had been getting by with a salary for which the real value was probably well under £450. It was justified in part by the soaring cost of living in Shanghai, in part by the precariousness of the employment and in part by the absence of what in current terminology is referred to as "fringe benefits". Lay did not

48. [J. Scarth]. "Twelve Years in China" (Edinburgh, 1860) As Scarth left Shanghai early in 1855, he quotes the original real value as £1500. FO 17/230 No. 174, Bowring to Clarendon. May 18, 1855, quotes the appreciated real value as £2000.

49. FO. 17/226. No. 16. Bowring to Clarendon. Jan. 6, 1855. Bowring, discussing salary complaints, notes that losses to British personnel in Shanghai in 1854 averaged 25%.

give cause for complaint by flaunting his new-found prosperity.

After all, he continued to be the main provider for his mother and the three dependent children still in England.⁵⁰ The size of his salary, however, may have been a contributing factor in his somewhat exaggerated conception of his office, for it was not long before complaints were being made about his haughty and over-bearing manner.

This aspect was, of course, more significant in terms of personalised, individual relationships. Another aspect of relations, not less affected by personal factors, was dealt with, however, as an institutional problem.

The agreement negotiated in June, 1854, incorporated provisions which, in effect, tended to establish the jurisdiction of the Consuls of the major Treaty Powers over the persons and actions of the foreign inspectors. When the agreement was referred to London, the Foreign Office, in a rather leisurely fashion, proceeded to analyse and evaluate the policy implications of the agreement.⁵¹ While these deliberations

50. Lay, at least, was still sending surpluses home to the end of 1856. When he received notice (FL No. 218 Shanghai, Harvey to Lay, 22 July 1856) that a credit for his terminal salary (£90.7.5.) was being held in Hongkong, he pencilled on the cover "transmitted home through Wade". His letter requesting transfer to "Bearer" was dated Shanghai Aug. 12. Lay also made another transfer of "£2000 from his Shanghai account on Dec. 27, 1856. cf. "JMA" II, A.2 (37) 981-982. (vide supra n.56).

51. As far as can be determined the Paris Government had no interest in Shanghai affairs. Washington was both disinterested and handicapped by a lack of public servants trained to advise on Chinese affairs. Cf. Fairbank "NSEQ" pp. 161-162.

were proceeding, a succession of reports of developments in China forced the Foreign Office to define policy in fairly concrete terms.

The most important figure involved in these developments, whether indirectly or directly, was T.F. Wade, the first British Inspector. It was during Wade's tenure that formal representations were made to the Foreign Office that, as a condition of its support of the Inspectorate, the British should insist on the extension of the system to all the Treaty Ports.⁵² It was Wade's decision to resign that activated the issue of control over appointments. It was Wade's claim to reinstatement in the Queen's Service that partly determined the decision that Establishment personnel who accepted appointment in the Emperor's Service, completely and absolutely severed their connection with the Queen's Service, and that re-instatement, if granted, was a matter of privilege and not of right.⁵³ It was also during Wade's tenure - extending into

52. "NCH" No. 206. July 8, 1854, p.194. Leader article. FO 97/100, under date of Dec. 21, 1854, a Liverpool East India and China Association memorial calls for uniformity at all the ports.

53. On receiving the report that Bowring had restored Wade to the Queen's Service (FO. 17/231 No. 231, Bowring to Clarendon, July 6, 1855) the Foreign Office immediately wrote back that Wade was to be considered provisionally as a "temporary" member. (FO. 17/224. No. 194, Clarendon to Bowring, Sept. 8, 1855). It should also be recorded that the Foreign Office was faced with the prospect of losing several of its China consular staff. In the same despatch, which ultimately only applied to Lay, that defined the policy, the Foreign Office gave approval to the appointment of Gingell at Foochow, Lay at Shanghai (already approved) and J.A.T. Meadows at Ningpo. (FO. 17/224 No. 193 Clarendon to Bowring, Sept. 8, 1855).

the period during which he was "breaking in" Lay - that two test cases developed,⁵⁴ which eventually led to the British Government's repudiation of those provisions which gave the Consul a "legal" jurisdiction over the foreign inspector. Finally, it was Wade (preceded by Alcock) who was the advocate - first from Shanghai and then from Hongkong) - who articulated and pressed the case for the expansion of the prerogatives and the extension of the jurisdiction of the inspector(s) against the joint onslaught of a hostile Consul and the more voracious element in the mercantile community.⁵⁵

Lay, it is true, was also indirectly and directly associated with these developments. He took up the fight when Wade left Shanghai at the end of June, but when he did, it was in the framework of decisions already made in response to Wade's activities. Lay became the focal point for the main controversy for several reasons. The "friends" of the Inspectorate were, on occasion, hard put to condone his frequent manifestations of intemperate, officious and vindictive behaviour while

54. The test cases were those affecting the "Wynaud" and the "Paoushan". Cf. Fairbank, "NSEQ" p.145 passim.

55. "Ibid". esp. pp.145, 156-57. Wade was carrying the burden of arguing the cases as late as April, 1856. By this time, Alcock was expected to be in London. FO. 17/246, No. 118, Bowring to Clarendon. Apr. 12, 1856.

carrying on his official duties.⁵⁶ From July 1855, Lay was left isolated in Shanghai without any British official to offer positive support for the Inspectorate.⁵⁷ The terminology of the despatches transmitted from London⁵⁸ defining the official view of Lay's status (as successor to Wade) was sufficiently imprecise to permit the inference that the Home Government recognised, but did not enthusiastically approve, the Inspectorate system.⁵⁹

56. "NCH" Nos. 263-271. Aug. 11, & Oct. 6, 1855, passim: Jardine, Matheson & Co. Archives, Cambridge. (Hereinafter cited as "JMA". The classification system used here will follow a code identifying the records according to a report prepared in 1957 by the then Archivist, Miss E. Bartlett, entitled "Jardine, Matheson Archive, Notes on Content"). II.A 5. (2) (23) A. Perceval to Hongkong, 2 Sept. 1855. p.257.

57. Wade left Shanghai about June 30. "JMA" II A.5. (2) (23) Perceval to Hongkong. 29 Nov. 1855 p.301 "I wish Sir John was here to take Mr. Lay's part who I think has been very much ill-used by our officials."

58. This despatch FO. 17/224 No. 193, Sept. 8, 1855, was transmitted by Bowring to Robertson on Oct. 29 (FO. 230/54 No. 136). Robertson, in turn, notified Lay of its contents on Nov. 12. ("FL" Shai. No. 191 Robertson to Lay).

59. "JMA" op.cit. p.301 (note 57, above). "From the wording of the despatch sent in to the Taoutae by our Consul.... the Chinese are led to believe that Mr. Lay has incurred the displeasure of his Govt. and Sir John for taking office under them and they have told several people as much." These reports were transmitted to London by Bowring. FO. 17/235 No. 394, to Clarendon, 10 Dec. 1855. Robertson had also sent copies of the FO. despatch to the French and United States Consuls, which considerably annoyed Bowring. Cf. FO. 230/54 No. 155. Bowring to Robertson Nov. 22, 1855.

In addition to the problems arising from these causes, Lay also found himself, and the Inspectorate, under attack from a Chinese quarter.⁶⁰ The erstwhile expectant taotai, Wu Chien-chang (Samqua), encouraged by his British and American supporters, was engaged in fomenting among Ch'ing officials and Chinese merchants opposition to Lay and the system.⁶¹

In mid-November, 1855, the text of the definitive despatch from London reached Shanghai. By this time - having been in office less than six months - Lay was so overwhelmed by the forces working to undermine his position that he privately divulged his intention to resign.⁶² This knowledge provoked the intercession of those firms - not less voracious, perhaps, but they were at least inclined to be more far-sighted - who preferred to carry on their operations in a setting of order rather than of anarchy. They caused Lay to postpone official notification of his decision to resign⁶³ and they addressed a letter to

60. Lay had earlier developed some feeling against himself by an attack on a Chinese employé. Cf. "NCH" No. 265. Aug. 25, 1855, p.15.

61. "JMA" II.A.5. (2) (23) p.301, Perceval to Hongkong. Nov. 29, 1855. "I am sorry to tell you that Samqua has already returned to Shanghai.....Foreign influence has been at work with him and he has nearly undermined Mr. Lay with the late Taoutae and Lan, who has been appointed to succeed him. I do not know if Mr. Cunningham joins [Robertson, Beale, Harvey & Co.'] but I fancy so.....I believe our officials and Mr. Beale are endeavouring to get Samqua again as Taoutae when two firms in Shanghai will do what they please at the expense of their neighbours."

62. Loc.cit.

63. "JMA" II.A.5. (2) (23) p.305. Perceval to Hongkong. Dec. 2, 1855. "....I have made [Mr. Lay] promise to remain at his Post until we hear from Sir John....."

Bowring affirming their support of the system and, in effect, called upon him to confirm a policy of positive support.⁶⁴

Bowring responded promptly and favourably, involving himself in consequence in a bitter exchange of correspondence with his Consul, D.B. Robertson.⁶⁵ In the meantime, Wu's influence was neutralised. A report to Peking by the highest provincial officials substantiated charges on which Wu had already been condemned locally.⁶⁶ Bowring's curtailment of the hostile attitude of the Consular staff and the withdrawal of Wu from Shanghai reduced the pressures sufficiently to cause Lay to decide to remain in office.

One further intensive attack, spearheaded by the American merchants,⁶⁷ was launched against the Inspectorate in the summer of 1856. This attack was based on two major complaints and a minor one.⁶⁸

64. A copy of the letter to Bowring had been enclosed in Perceval's of Nov. 29. Robertson forwarded a copy of the letter to Bowring on Decm. 3 FO. 228/196. No. 108.

65. Bowring's reply to Robertson on the merchants' letter, asserting strong Government support for the system: FO. 230/54 No. 159, 11 Dec. 1855. On copy sent to FO., there is a pencilled notation "too broad an interpretation." (FO. 17/235. No. 394. Bowring to Clarendon. Dec. 10 [sic], 1855). A copy of Bowring's despatch was not transmitted to Lay until Jan. 17, 1856. ("FL" Shanghai, Misc. No. 14. Harvey to Lay).

66. Cf. Fairbank, "Trade". p. 460 Note n., also Morse "Submission", p. 24, note 74.

67. However, "JMA" II.A.2 (37) 913 Perceval to Hongkong. Sept. 6, 1856. "Mr. Hudson is nominally at the head of the movement but Mr. Cunningham & Mr. Beale are the real promoters of it."

68. "CMC VII" See note 37 above.

The major complaints centred on the merchants' contention, firstly, that the system had been introduced as a temporary expedient and, secondly, that the strictness with which Customs regulations were being applied placed the merchants in Shanghai at a disadvantage in relation to those at the other Treaty Ports. On the first complaint, the argument was that with the restoration of stability, the Ch'ing Authorities were in a position to manage satisfactorily using their traditional methods. Taking advantage of the fact that, despite Bowring's and Lay's efforts,⁶⁹ the system had not been introduced at any of the other Treaty Ports, and of the fact that Lay's strongest supporter, Chi-erh-hang-a, had been killed in an action against the Taiping,⁷⁰ the merchants advanced the premise that the system was strongly opposed by Ch'ing officialdom.

The second complaint constituted a more direct attack on Lay, though his name was not mentioned. What disturbed the merchants (it was asserted that these included Chinese as well as non-Chinese merchants) was that Lay was extending formal procedures of administration to include observance of Ch'ing regulations and was also expanding the surveillance functions of the Inspectorate in the effort to curtail smuggling.⁷¹ The

69. For Bowring's efforts, see esp. FO. 17/231, No. 220. To Clarendon, June 26, 1855; FO 17/232 No. 247. To Clarendon July 13, 1855. No. 263, Aug. 3, 1855. No. 302 Sept. 9, 1855; FO. 17/234 No. 327. Oct. 12, 1855. For reference to Lay's efforts, see note 111 below.

70. "ECC" I. p.118.

71. Cf. Wright "Hart" p.113 for a catalog of some of Lay's "reforms", though Wright tends to overstatement on behalf of the Inspectorate.

merchants put their emphasis on the claim that this was causing a diversion of the trade from Shanghai and was thus jeopardising the investments made in real property in Shanghai as well as the port's potential as a major entrepot.

The minor complaint concerned the continued absence of an active American Inspector from the three-man board.⁷² As it was the concluding paragraph to the merchants' letter, it appears almost as a postscript; as though the merchants were cognisant that an appointment - which some disapproved - was imminent.⁷³

The objective of the merchants was unequivocally expressed: "to press earnestly upon [Commissioner Parker's] attention the expediency and justice of abolishing the present system."⁷⁴

The attack proved ineffectual. On this occasion the British Consular staff did not become involved. Fewer British firms associated themselves with the campaign.⁷⁵ The majority of British firms defended both Lay and the system (while continuing to call for extension to other ports) in a joint letter to Bowring, who repeated his earlier affirmation

72. See notes 37 and 43 above.

73. Notification of M.W. Fish's appointment was obviously made before Aug. 23, 1856. Cf. "NCH" No. 317 Aug. 23, 1856.

74. "CMC VII" Merchants to Parker. Aug. 5, 1855. p.30.

75. Morse, "Submission" p.28

of support.⁷⁶ The American Commissioner, clearly in sympathy with his compatriots, had to recognise the curious situation.⁷⁷ The system, unenthusiastically supported by the home governments of both Britain and the United States, whose representatives in China (along with those of France) had virtually imposed the system on the Ch'ing Authorities at Shanghai, was outside existing treaty provisions. In consequence, at this juncture, the decision whether to extend or to abolish the system was an exclusively Ch'ing concern. A final factor that may have contributed to the curtailment of the attack was the development of the lorcha "Arrow" incident. The incident did not lead to the end of controversy at Shanghai. It did tend to direct attention away from Lay and to direct attention to treaty revision which could, as a result of the incident, be more confidently anticipated.

In the category of political and legal matters, then, Lay, as successor to Wade, was a focal point for the delineation of the status of the inspectors and the Inspectorate. His role was essentially passive, though his personality and behaviour tended to aggravate the conflict between the supporters and opponents of the system.

76. A complete sequence of the correspondence may be found in "NCH" No. 319. Sept. 6, 1856. No. 320, Sept. 13, 1856 and No. 325, Oct. 18, 1856.

77. "CMC VII." Parker to Merchants Aug. 25, 1856. pp.32-34.

Consideration of the actual functioning of the Inspectorate can be dealt with briefly. Insofar as the Shanghai system was concerned, Lay's role was much less that of an innovator, though he was not above casting himself in this role, than that of a regulariser of customs practices and procedures. Three examples should clearly illustrate the point.

Firstly, a new set of customs regulations (resented by Consul Robertson because he was neither consulted nor notified in advance) were issued on June 25,⁷⁸ after Lay had taken office. However, Wade, who was still in Shanghai, was largely responsible for the formulation of the regulations.⁷⁹

Secondly, Lay claimed to have introduced in 1856 the procedure of issuing exemption certificates - a system whereby importers received a credit rebate for duties paid on unmarketable goods re-exported to a "foreign" port. As S.F. Wright has shown, the quasi-formal procedure was introduced by Alcock at Shanghai in 1852.⁸⁰ In fact, while considered a privilege because not provided for by Treaty, the practice

78. FO. 228/196 No. 50, Robertson to Bowring, Aug. 9, 1855.

79. 17/232, No. 257. Bowring to Clarendon. July 28, 1855. Enclosing Wade's report. Information is added at the end of the report.

80. Wright, "Hart" pp. 85 ff.; p.193; p.222. Fairbank, "Trade" I pp. 313 ff.; II p.30 (Ch. 17, n.16).

can be traced to the early 18th Century, when all customs charges were settled exclusively through Chinese "security" merchants.⁸¹

Finally, about five months after Lay took office, the first harbour facilities for mariners were inaugurated on the approaches to Shanghai. Actually, strong representations had been made for the introduction of such facilities by the United States' Consul before Lay took office.⁸² The survey work itself and the positioning of the first buoys were carried out by an American naval vessel.⁸³ Lay was responsible for persuading his Ch'ing superiors that the expenses incurred were a legitimate charge on customs dues. The slow expansion of services continued in the succeeding years under Lay's direction, but he is not entitled to credit as an innovator.⁸⁴

From these examples, it is apparent that the awareness of the need for the development of basic practices and procedures in customs administration antedated Lay's appointment. In this period of his career, Lay

81. Morse, "Conflict" pp. 64-65; "Submission" pp.2-3.

82. "NCH" No. 252, May 26, 1855. Cf. also FO 17/234 No. 361, Nov. 12, 1855. Enclosures. Robertson to Bowring.

83. FO 228/196, No. 108, Robertson to Bowring Dec. 3, 1855. (There is also additional confirmation in the recently published diary of G.H. Preble "The Opening of Japan" U. of Okla., 1962. Cf. Review "JAS" XXII, 4, Aug. '63. p.484).

84. (Materials from the archives of the Elgin Estate - Broomhall, Dunfermline, Fife - which include a collection of Sir F.W.A. Bruce's papers, will be designated as "E/B") "E/B" Bruce Day-book (1858), March 25.

rarely anticipated the needs of the service. His energies were largely consumed in organising the rudiments of an effective administration and in providing efficient facilities. Additional aspects of the Inspectorate and Lay's role in it will be indirectly touched upon while treating the specific question of his personal impact, and the responses to it, during this first phase of his career "in the Emperor's Service."

It is perhaps, begging the question to consider Lay's personal impact on the Foreign Office in London. Having left England in his early 'teens, having been recruited into the China Service from Hong-kong and having not desired, for reasons of economy,⁸⁵ nor been compelled, for reasons of health, to take a home leave, Lay did not have any personal contacts with officials at the Foreign Office. Although fairly frequent notices of commendation of Lay had been sent to London by Sir J. Bowring, up to the time of the assumption of his duties as Inspector, the definitions of policy were resolved without reference to him personally.

Particularly after the contretemps of Nov.- Dec., 1855, however Bowring again frequently commended Lay's services to the Foreign Office. On one occasion, he supplemented his commendation by passing on a portion

85. Vide antea n.50.

of the contents of a personal letter from Lay in which Lay reported on some private conversations he had had, on political matters, with a Ch'ing official.⁸⁶ In early 1857, a long memorandum of Lay's on the operations of the Inspectorate was forwarded directly by Bowring to the Foreign Office.⁸⁷ By the time it would have reached London, however, basic policy decisions on proposals to be made during renegotiation of the treaty had been made and responsibility for carrying them through had been delegated to James, Earl of Elgin and of Kincardine. When Lay next became prominent in notices to London, commencing in mid-1858, it was through his association with the activities of Lord Elgin's mission.

Turning from London to Hongkong, the relationship between Bowring and Lay comes to the fore. When Bowring opposed Lay's appointment to the Inspectorate, while he was partly motivated by commitments he had made to other, senior members of the Queen's Service, he appeared also to be motivated by a genuine feeling that Lay was not ready for the office. He may have resented the pressure Lay exerted on the Ch'ing Authorities to force his approval of the appointment, but when he gave his approval (presumably after having discussed the matter personally with Alcock) he gave in unreservedly. This was most forcefully demonstrated by the

86. FO 17/246 No. 91, Bowring to Clarendon. Mar. 13, 1856. Enclosure.

87. FO 17/244 No. 65, Bowring to Clarendon, Feb. 6, 1857. Seven enclosures.

unequivocal way he supported Lay's request to be considered as not having retired from the Queen's Service.⁸⁸

For several months, however, there was a lack of direct "communication" between Bowring and Lay. This may be ascribed to the fact that both were pre-occupied with their immediate problems. Bowring had been absent from Hongkong for over eight weeks. There was a large backlog of correspondence both from London, in which he found that his decisions with respect to the Shanghai "Arrears of Duty" question continued to be repudiated, and from Shanghai, where the first of the test cases - referred to earlier - was coming to a climax. In addition, in order to placate the disaffection generated by Lay's appointment, he had to urge the Consular chiefs at the other Treaty Ports to exert themselves to promote the introduction of the system at their respective ports.

Lay's pre-occupations have already been dealt with. It was significant that in his period of trial he did not personally solicit Bowring's assistance. Lay was probably still sensitive on the point of Bowring's opposition to his appointment but one might also venture to suggest that it was a measure of the sinification of Lay which impelled him to use a roundabout method of getting Bowring to come to his defence.

88. "FL" Shanghai, No. 77. Robertson to Lay. June 26, 1855. Fairbank, "NSEQ" p.159, points out that since he intended to do this for Gingell, he was obliged to do it for Lay.

Be that as it may, in the period following the first crisis, Bowring's determination to support the system at Shanghai was of direct benefit to Lay. At the same time, Lay sought to fulfill his duties in a manner that would vindicate Bowring's support. The effect of these influences was that Bowring's confidence in Lay grew appreciably and he inclined more and more to attach greater importance to Lay's role. Thus, in 1856, he wrote of Lay "There is no foreigner in China who has equal opportunities for ascertaining the feelings of the High Mandarins, and probably none who possesses so much of their confidence."⁸⁹ Nearly a year later, after "much personal conversation with Mr. Lay", he noted:

.....among other advantages [the Inspectorate system] has removed from the Superintendency and the Consul numberless questions which have been equitably settled on the spot, while at the other Ports the annoyances, vexations and embarrassments growing out of the habitual violation of the laws of China are a source of constant solicitude. Above all I could shew that it has associated the British name with honor and honesty, and has given us a status in the north of great and growing importance and more particularly so at the present moment.⁹⁰

Though Lay is not specifically referred to in this portion of Bowring's despatch, it is obvious that he is not alluding to the efforts of the French (M. Edan) and American (Dr. Fish) Inspectors.

The absolute confidence that Bowring had in Lay was epitomised by the fact that though Sir John had been delegated to an insignificant

89. FO. 17 /246 No. 91, op.cit.

90. FO. 17/264 No. 63. Bowring to Clarendon, Feb. 4, 1857.

role by the appointment of Lord Elgin, he recommended to the latter that he should associate Lay with his mission.⁹¹ Lord Elgin, chary of Bowring's advice, was slow in acting on the recommendation, but ultimately Lay was invited to join the Mission.⁹²

Lay was fortunate in being able to re-establish a favourable relationship with Bowring, for the relationships between himself and the British officials at Shanghai were for some time reciprocally antagonistic. The situation was much more complex than that of a newly appointed Consul and a newly appointed inspector vying with each other for primacy of status and jurisdiction. This conflict, which was a legacy from Wade to Lay, was fed by unrequited ambition and passionate animosities.⁹³

On the one side, there is no question that the Consul, D.B. Robertson, sincerely believed - and justifiably so - that the inspectors were encroaching on the Consul's prerogatives as stipulated in the original agreement, though he was not always supported in his claims by his French and American colleagues. But associated with him on his staff were two men whose motives were not above suspicion. One of these men was C.

91. "E/B" Private. Bowring to Elgin. Aug. 8, 1857, "I have heard from Mr. Lay. He is delighted with the idea of being associated with your Lordship. His services will be invaluable."

92. "E/B" Elgin to Lay. April 9 [1858]. Copy enclosed in No. 90 Elgin to Clarendon April 15, 1858.

93. Fairbank, "NSEQ" pp.143-144 presents a good account of the complexities of the animosities, but the "JMA" was not available to him when he prepared his monograph.

Sinclair, one of the unsuccessful applicants for Wade's post, who had accompanied Robertson to Shanghai to fill the post to be vacated by Lay's transfer to Canton.

The other man was F.E.B. Harvey who, while on leave in England, was designated to fill the post of Vice-Consul at Shanghai. When he arrived in Shanghai, at about the time Lay assumed the inspectorship, he took up his residence in the home of T.C. Beale, arch-foe of the Inspectorate, of Lay, and of the house of Jardine, Matheson & Co., and its supporters. At the start of the crisis of 1855, A. Perceval, Shanghai partner of Jardine's, privately wrote his chiefs at Hongkong:

Our Consul, I fear, is not the right sort of person for his position and I look upon him as merely a toady of Mr. Beale's, his Vice [Harvey] being the same and living in the house with Mr. B. They are making a set at the Inspectors of Customs.⁹⁴

At the height of the crisis, Perceval was more explicit:

Messrs. Beale & Robertson are doing all in their power to get Mr. Lay dismissed by the Chinese Authorities and I understand to have Mr. Harvey appointed in his place. This of course would be very annoying to me and to most of the community as Mr. Lay is strictly impartial and I have fears of the other who lives at Mr. Beale's house. You may fancy how far the Consul goes when you learn that at a farewell visit from the Taoutae [Chao-Te-ch'e] yesterday he said "Well have you dismissed Mr. Lay yet for if so I can appoint another man for you - " This the Taoutae told Mr. Lay.....⁹⁵

94. "JMA" II.A.5 (2) (23) Perceval correspondence, passim, Sept. 1855.

95. "Ibid". passim. Nov. - Dec., 1855.

Though it seems not to have been of any advantage to him, Lay had at least one ally in the Consulate. His second younger brother, W.H. Lay, was Supernumerary and Assistant on the staff.

On the other side, at least until early in 1856, Lay consistently behaved in a manner which could not help but inflame the atmosphere. In his mien and conversation he caused Robertson to feel personally affronted. His immature, vindictive responses to any semblance of criticism or opposition led him to discard even the simplest courtesies, such as forwarding official notices from the Inspectorate office to the Consulate.⁹⁶

With the intercession of Bowring, the intensity of the conflict between the Inspectorate and the Consulate gradually subsided. Robertson, at least, eventually was able to take a detached view of the crisis,⁹⁷ but despite clarification of the respective jurisdiction of the two offices and despite changes in personnel, the antagonism between the two agencies continued for several years, to explode, periodically, in new crises.

There is not much information, apart from that already provided, that sheds light on Lay's relationships with American and French officials.

96. FO. 228/195 No. 29 Robertson to Bowring July 6, 1855.
FO. 228/196 Same to Same passim.

97. FO. 391/8 [Private] Robertson to Hammond 29, March 1964. A few years later, Robertson was to reverse his opinion again.

Consul Murphy, while stationed at Shanghai, was energetic in support of the Inspectorate system.⁹⁸ Whatever may have been the unpleasant aspects of Lay's personality, the Acting Vice-Consul, Dr. Fish, subsequently became the American Inspector. Dr. Parker, when he returned in the capacity of United States Commissioner was at first nominally a supporter of the system, but as has been shown, because of clashes with the Chinese Superintendent and Lay, his attitude became distinctly cool.⁹⁹ He was not in a position, however, to promote the extreme measures advocated by the American merchants.

The French (Consul de Montigny, his assistant, B. Edan, and, subsequently, the Minister de Bourboulon) tended except on one occasion to support the system¹⁰⁰ - and an expansion of jurisdiction for the board of inspectors - because it checked the operations of the unregenerate smugglers. The French probably pursued this course because their trade

98. FO. 230/54. No. 16. Bowring to Robertson. Jan. 24, 1856.

99. "NCH" No. 318. Aug. 30, 1856. p.18. Correspondent "X" "As it is no secret, there can be no treason in saying that the American Minister is avowedly opposed to the Custom-house....."

100. Morse, "Submission" pp. 26-27: "JMA" II.A.2. (37) Sept. 15, 1857. Perceval to Hongkong. The incident involved the transshipment of a cargo of what was alleged to be "foreign" rice. The rice was shipped without permit, under the French flag (having been transferred from an American vessel.) Perceval comments "How the affair will end I know not but it is looked upon as in opposition to Foreign Inspectors [sic]." The incident took place while the French inspectorship was vacant as a result of Smith's death. Lay had actually asked for approval of the shipment, but the Taotai was adamantly opposed.

was nominal in any case and because unrestricted smuggling was invariably advantageous to the insurrectionary forces, whom the French usually opposed on the ground of their Protestant inclinations.

In much the same manner, most of the relevant factors connected with the relations of Lay with the non-official residents of the foreign community have been illustrated in the discussion of other issues. In the early period of Lay's tenure, certainly, general disapproval was voiced with respect to his myopic antics.¹⁰¹ In the long run, those most ardently opposed to the system - a coterie of British merchants led by Dent, Beale & Co. and most of the American merchants - acted on the presumption that Lay's defects were an inherent part of his personality. Those generally favourable, or at least willing to give lip-service to the system,¹⁰² ascribed the more serious of Lay's defects to the effect of the heavy burden carried by such an inexperienced youth. The former preserved an unceasing hostility toward Lay, while the latter sought by reasonableness and persuasion to encourage Lay to adopt more mature responses.¹⁰³

101. "NCH" No. 263. (Aug. 11, 1855) passim.

102. What basically seemed to distinguish the groups was that the former acted on the principle that what was generally accepted as "wrong" was "right" in China. The latter acted on the principle that what was proscribed, even in China, was only "wrong", if the culpable party were caught. There is ample evidence to confirm this in "JMA" II.A.2 (37) and II.A.5.(2) (23) covering the period 1856-58.

103. "NCH". 1855-1861 passim.

One other aspect of community opinion of considerable significance has not been adequately evaluated in published studies on this period. A comprehensive analysis of the positions supported by the publishers and editors of the "North China Herald" is too broad a subject for the purposes of this study. Yet, the weekly "North China Herald", serving but a small community, was an important opinion-forming element in that community.

Related to the immediate question, the editorial policy of the paper can be simply differentiated into two periods, demarcated by a change in the publisher and editor. H. Spearman, founder, operated the paper until his death (aged 53) on March 22, 1856.¹⁰⁴ A new publisher and editor C.S. Compton acquired control from May 24, 1856.¹⁰⁵

Under both publishers, the correspondence columns were open to the expression of all shades of opinion respecting the Inspectorate system and Lay, since he was the focus of controversy. Spearman, however, except for a brief period during August-September, 1855 - when he launched a direct attack upon Lay and coined the term "the junior autocrat" - in his leader columns expressed strong support for the system and adopted a conciliatory and sympathetic attitude toward Lay. Lay, however, nurtured his wounded pride to the extent that he did not reciprocate

104. "NCH" No. 295 Mar. 22, 1856.

105. "NCH" No. 304 May 24, 1856.

Spearman's gestures of goodwill. The Inspectorate did not resume supplying information, cut off during the period of attack, until after Spearman's death.

Compton, on his part, did not respond positively to Lay's gestures of goodwill. His support of the system was equivocal and his criticisms of the inspectors (for which one could usually read "Lay") were frequently phrased in terms suggesting hostility. This attitude was only moderated when it became apparent in October, 1858, that some form of foreign Inspectorate was to be introduced for all the Treaty Ports and when it was also fairly certain that Lay would become the chief foreign "inspector".¹⁰⁶

Apart from the obvious fact that Lay survived the ordeals and crises of the period, whether caused by factors outside or inside his range of control, another small item supports a conclusion that he was not a completely "isolated" personality in the Shanghai foreign community. At the first meeting of the Shanghai Literary and Scientific Institution (which became transformed into the North China Branch of the Royal Asiatic Society in the following year), H.N. Lay was appointed one of the directors, of whom there were to be four.¹⁰⁷

"The formal relations of H.N. Lay with the Chinese authorities form a subject awaiting the industry of a master".¹⁰⁸ This observation is as

106. "NCH" No. 428. Oct. 9, 1858

107. "NCH" No. 378. Oct. 24, 1857.

108. Fairbank, "NSEQ". p.141

true at present, regrettably, as it was when first made over a quarter of a century ago. It is beyond question, as Bowring had stated, that Lay had opportunities for personal contact with Ch'ing officialdom that were not available to any other foreigner in this period of Sino-foreign relations. A student with limited qualifications, reading the readily accessible correspondence of the officials charged with foreign affairs in the Shanghai region through to about 1859, would be strongly tempted to detect Lay's direct influence. The concepts, the lines of argument and, not infrequently, the turns of phrase, resemble patterns in the correspondence of British officials arguing for policies promoting the mutual interests of Britain and China.

It may never be possible to document such a correlation, but the evidence for Lay's personal associations with the officials is decisive. An indication of Lay's relationship with Chi-erh-hang-a, the Manchu general who became Governor of Kiangsu, has already been given. Besides his direct role in securing Lay's appointment, it has been suggested that his action leading to the removal of Wu Chien-chang from Shanghai was more than a coincidence. In the early months of 1856, jointly with I-Liang, Governor-General of the Liang Kiang, he memorialised information derived from Lay about the Powers' intention to press for treaty revision,¹⁰⁹

109. "IWSM" (S) pp.311-313. HF 12; 29,3-29b, 8 Memorial: I-liang and Chi-erh-hang-a. Mar. 24, 1856.

on Lay's proposals for the acquisition and manning of a fleet of shallow-water gunboats (citing their effective use against the Russians in the Crimean War!) to be used against pirates and the (Taiping) bandits,¹¹⁰ and on various complaints about discriminatory and inefficient customs administration at Ningpo and Foochow. They coupled this last point with Lay's urging that the foreign Inspectorate system should be extended to these Ports.¹¹¹

Lay's view of his success in his relations with Chi-erh-hang-a are reflected in his report of an "offer of Ke's [sic] to take him as private secretary to Pakin."¹¹² There is evidence that seems to confirm that a special offer of some sort was made. A memorialist, writing during the negotiations at Tientsin in 1858, asserted that it was on record that Chi-erh-hang-a "when he was in the process of re-capturing Shanghai, tried by many means to get [Lay] into his clutches" and that he offered him a position as "private secretary to the Kiangnan Customs establishment" previous to offering him the position of Commissioner [inspector].¹¹³

110. "Ibid". HF 13; 4b, 5-5b,2, Memorial I-liang and Chi-erh-hang-a. April 16, 1856. With Vermillion endorsement.

111. "Ibid". HF 13; 5b, 8-6, 10: Memorial. I-Liang and Chi-erh-hang-a. April 24, 1856. For the unexpected consequences of this effort, see "NCH" No. 308 June 21, 1856. p.186.

112. "E/B". Bruce day-book (1858) April 12

113. "IWSM" HF 25: 32b, 9-33b,5. Memorial. Temporary junior vice-president of the Board of Revenue, Sung-ch'in. June 17, 1858.

Lay developed contacts with other imperially appointed officials¹¹⁴ in this period that helped to reduce the impact of Chi-erh-hang-a's untimely death. Lan Wei-wen, who had been acting Taotai from July, 1854 to May, 1855, resumed this office in December, 1855¹¹⁵ and then held the post until about mid-1857. It was he who was the medium of communication between Lay and the higher provincial authorities.

Chao Te-ch'e filled the gap as Taotai between May - December, 1855. Though he was an independent-minded official, he and Lay were on good terms. He succeeded Chi-erh-hang-a as Governor and it was in large part because of the earlier contacts between Chao and Lay that the representatives of the four Powers were able to deliver notes, addressed to the Grand Secretary Yü, to Chao at Soochow in February, 1858.¹¹⁶

The last important official, with whom Lay was to have the longest direct relationship, was Hsüeh Huan, who was almost always referred to in contemporary records as "Sieh". Lay probably first contacted this official when they were both engaged in operations related to the insurgents in and around Shanghai.¹¹⁷ Hsüeh became Taotai in 1857 and,

114. Basic factual information is taken from "ECC" with supplementary data from Swisher's section on "Glossary of Chinese Personal Names". pp. 703-760.

115. "JMA" II.A.5 (2) (23) P.301 Perceval to Hongkong. See note 41 above.

116. Details connected with this event are documented in the next chapter.

117. Swisher, op.cit. p.721 and Fairbank "CSPSR"(xix:1) p.95

after October 1858, received rapid promotion. The facts that he was noted as a "liberal" and that he enjoyed "the powerful and understanding support of Ho Kuei-ch'ing", who had succeeded I-liang as Governor-General in 1857,¹¹⁸ are reasons for the temptation to detect Lay's influence. Since, however, the more significant consequences of their relationship is more relevant to the next phase of Lay's career, further discussion will be postponed to the next chapter.

In the conclusion of this abbreviated survey of Lay's relationships with Ch'ing officials, it is perhaps important to remark that though Chinese merchants may have been disaffected by the stringent measures imposed under the Inspectorate,¹¹⁹ that though a merchant/official - Wu Chien-chang - sought to undermine the Inspectorate, and that though Lay had a reputation for being a hard, intemperate master over the Inspectorate's employees, (Lay was non-discriminatory where dishonesty or inefficiency was the issue), he was able to work effectively with, and sustain the support of, the provincial "career" officials. On the one hand, these officials were aware of the advantages - administratively and

118. Swisher, op.cit. pp. 722-23.

119. A very candid, but general appraisal of merchant attitudes is to be found in Alexander Michie, "The Englishman in China....." (Hereinafter cited as Michie, "Alcock"). 2 vols. (Edinburgh 1900) Vol.I, ch. XIII, esp. p.250. The Chinese, as well as others, were incensed when in Aug. 1855, Lay was instrumental - in a cavalier fashion - in having the opium trade absolutely excluded from Shanghai. Cf. Wright "Tariff" p.74; "JMA" II.A.5. (2) (23) P. 257; FO 17/232 No. 301.

financially - which resulted from the operation of the system.¹²⁰ On the other hand, allowing for an element of the "sinification" of Lay instilled during his intensive training, it may not be remiss to suggest that characteristics nourished in career officials may result in affinities of temperament and outlook, regardless of where the officials receive their career training.

Having completed the presentation of various aspects of Lay's connection with the Shanghai Inspectorate, it may again be queried whether it is valid to place too much emphasis on the point that this phase of his career was passed "in the Emperor's Service". The point is, of course, that he was employed in the provincial administrative structure, that the official British view was that he was an employé of the Chinese government and that, to many in the foreign community, he promoted the interests of that government to the detriment of their own (British) interests. But from another view, it must be accepted that the Central government had little knowledge of the "system" or of its implications, and the appointments of the foreign inspectors were not Imperially sanctioned. Besides this, contrary though it may have

120. "IWSM" HF 29; 22,5 - 23b, 10. Memorial. Ho. Kuei-ch'ing Aug. 2, 1858, (A portion of this memorial, previously cited, is in Fairbank, "NSEQ" p.142.) The relevant passage: "For the last several years the customs revenue has been comparatively prosperous and this is due to (Lay's) efforts sternly to control smuggling and stealing. For this reason the successive Su Sung T'ai Taotais showed him favour and brought him under control and used him."

been to the technical interpretation of the Government in London, the British nominees took the view that they were being "loaned" from the Queen's Service. The conscientious performance of the functions of the inspector could not help but be of advantage to the Ch'ing government, but in bringing honesty, equity and efficiency to the customs administration, the inspector was fostering primary British interests.

There is no evidence to suggest that the provincial authorities were concerned with the subtle implications of the foreign Inspectorate during this period. They considered Lay, in particular, as a pliable instrument. He was to be used as a source of information about the attitudes, objectives and intentions of the foreigners, while also being used to control their trading and commercial operations. There is no suggestion that he was looked upon as anything but a representative of foreign interests.

In a sense, Lay was a "double agent". He was being used by Sir J. Bowring in the unofficial capacity of a political/diplomatic instrument. The discussion of these activities in this chapter has been restricted because firstly they were unofficial and, therefore, not directly relevant to the main topic and, secondly, the cumulative and ultimate effect of these was to encourage Lord Elgin to try to get Lay to serve two masters simultaneously.

Chapter VII

Serving Two Masters - First Phase, 1858-59

The description of H.N. Lay as a "double agent" must obviously be qualified. He did not deliberately sell his services or his information within a setting of espionage. But he was receiving a salary from the Ch'ing government, for which he conscientiously performed a set of defined services, while he used his position to promote the interests of his own government. Whether he, and those who encouraged him, were justified or not in their assertion that by following this course he was promoting the interests of both governments, must always be a subject of dispute.

The reason for this is not so much that there was anything enigmatic in Lay's character or in his own objectives. What was enigmatic was the role in which he was cast by his two masters, the British and Ch'ing Authorities, during this stage in his career. The enigma was inherent in the institution of the Shanghai foreign Inspectorate. Because the foreign Inspectorate was preserved, even during the development of increasing tensions between the Treaty Powers and the Empire, the enigma was preserved. The enigma was virtually institutionalised, as far as the British were concerned, when the failure to relieve the tensions - especially in the South - led to open warfare. The record of Lay's activities in fulfilling his role thus

provides material for conflicting points of view.

Some of the evidence recorded in the preceding chapter can be transferred to fit the context of the present problem. This will serve as a foundation for crystallising the enigmatic character of Lay's role in the events surrounding the Tientsin and Shanghai negotiations of 1858.

When Lay made his recommendation about the acquisition of a small flotilla of gunboats in 1856, he was expanding on proposals which had been made to local authorities since at least the beginning of the decade.¹ In the first months after Lay took office, the Taotais for Shanghai and Ningpo began to make arrangements for the purchase and fitting out of steamers that could be used effectively against coastal pirates and for suppression of smuggling.² These efforts were cut short by the opposition of the Central Government.³ Apparently to sidestep this opposition, some Chinese merchants of Shanghai assumed the initiative to underwrite a small flotilla -

1. Fairbank, "Trade". Ch. XVIII. Also p. 421.

2. "JMA". II.A.5 (2)(23) Perceval to Hongkong. P. 258. Sept. 3, 1855.

3. "JMA", II.A.5 (2)(23) Perceval to Hongkong. P. 264. Sept. 19, 1855. "I see no chance of selling a steamer here now for both the Shanghai & Ningpo Taoutaes have got into disgrace for purchasing the 'Confucius' & 'Paoushan'."

presumably for convoy duty.⁴ The flotilla recommended in 1856 by Lay was to be used, in addition, on the inland waterways to attack the Taiping strongholds.

In the state of sino-foreign relations in 1855/56, the attempts - notwithstanding the fact that they all failed - to encourage the Ch'ing Authorities to acquire "modern" naval armaments were not looked upon as constituting a danger for foreign interests. In fact, all the purposes cited were primarily directed toward the promotion of British interests that were officially supported. British naval forces carried the brunt of operations against piracy - operations, which were a charge upon the British exchequer.⁵ It was the official position, at least, that smuggling was destructive of the long term interests of British trade and commerce. One of the main objectives sought in the negotiations for treaty revision was for the opening of additional ports to trade, particularly a number on the Yangtze River. Such an objective could not be realised while long stretches of both shores of the river were in the control of, or subject to, the attacks

4. "JMA". II.A.2 (37). Perceval to Hongkong: No. 916. Sept. 9, 1856. "The Chinese Merchants (for their Government) wish to purchase 5 or 6 steamers and also employ foreign soldiers - Takee sounded me about it several times....." Perceval disapproved this initiative because Beale was to be the agent for the purchases in England.

5. The standard study on this subject is Grace Fox's "British Admirals and Chinese Pirates, 1832-1869". (London, 1940).

of Taiping forces.

Lay could and did press upon the Ch'ing Authorities the desirability of, and need for, the acquisition of these modern facilities - in terms of the advantages that would accrue to the Empire - as long as and as often as the advantages were also favourable to British interests. From the time of the "Arrow" incident, however, he did not take any steps that would place an instrument in the hands of the Ch'ing Authorities which could be used against the British.⁶ Whether or not he should have done so was not the basic issue. The basic issue was that, despite the change in the character of the relations between Britain and China, he continued, with the tacit consent of his government, as a Ch'ing employé.

Another side to the enigma of his situation is crystallised by reference to the memorandum which he gave to Bowring on February 6, 1857, for transmittal to London;⁷ by which time it was recognised that the differences would probably have to be resolved by resort to armed force. The memorandum was written in reply to a despatch from the Foreign Office which enclosed a series of complaints from British merchants to the effect that the operation of the foreign Inspectorate was detrimental to trade

6. There are no further references in documents later than the citations already given. The idea that the Ch'ing government should acquire an adequate marine policing service was indirectly alluded to in the Tientsin Treaty (Arts. XLVI and LIII) and Shanghai "Rules" (10).

7. FO 17/264. Enclosures in No. 65 Bowring to Clarendon. Feb. 6, 1857.

at Shanghai.⁸

Lay's remarks and the information that he supplied repudiated these complaints. The total of the evidence (including figures showing the increase in revenue available to the Ch'ing government!) demonstrated conclusively that trade had expanded appreciably during the administration of the Inspectorate.

The enigma of the situation was strikingly illustrated by the formal statements made by the two officials concerned. The principal British Officer, Sir John Bowring, replying to the despatch on February 4, presented a vigorous defence of the system, enumerated in superlatives its many advantages and advocated that the British Government should make its compulsory extension, to all ports open to foreign trade, a treaty provision.⁹ The Ch'ing official, H.N. Lay, because of the obvious benefits to the Ch'ing government, felt constrained to close his memo with this statement:

I do not desire that anything I have said above should be considered as a defence of the Inspectorship system, for, as I have already stated to your Excellency, I would not consent to continue as Inspector of Chinese Customs, without the approval of or unrecognized by HMG.¹⁰

8. Desp. No. 234. Clarendon to Bowring. Dec. 9, 1856. Referred to in FO 17/264 No. 63. Bowring to Clarendon. Feb. 4, 1857.

9. FO 17/264. No. 63. op.cit.

10. FO 17/264. Enclosure in No. 65. op.cit. Underscoring as in ms.

The basic enigma of Lay's position, already apparent at this stage of Sino-British relations, developed in complexity as successive steps led to armed hostilities. As far as Lay was directly affected, the first step was that corresponding to Bowring's notice to Lord Elgin in August, 1857, ^{namely, a statement} that Lay would be "delighted with the idea of being associated with your Lordship."¹¹ The "idea" would appear to have originated with Bowring rather than with Lord Elgin, for before Lord Elgin made a concrete offer to Lay, some nine months later, he investigated every possibility of using a regular member of the Queen's Service.¹²

In the interval, Lay took what opportunities there were to make a favourable impression, yet he was discreet in his acts. Thus, when information was being sought about the transport of tribute grain to the North,¹³ Lay privately supplied Wade with relevant information to bring up-to-date a lengthy report that the latter had first prepared in 1852. This information, which was useful in planning a schedule of operations, was passed on "privately", of course, to Lord Elgin.¹⁴

An unforeseen opportunity developed after the fall of Canton in

11. "E/B" Bowring to Elgin. Private. Hongkong. Aug. 8, 1857.

12. Vide postea p. 182 ff.

13. "E/B" Wade to Elgin. Private. Hongkong. Oct. 31, 1857.

14. "E/B" Wade to Elgin. Private. Hongkong. Nov. 12, 1857

December, 1857. The Powers decided to make one final diplomatic approach before the Allies in military action - Britain and France - undertook to launch a campaign directed towards Peking.

As Shanghai was the most northerly of the Treaty Ports and as friendly relations had generally characterised intercourse between foreign and Ch'ing officials in the area, it was felt to be the most suitable place from which to have correspondence transmitted to Peking. When the couriers, the Vicomte de Contades for France and Laurence Oliphant (Lord Elgin's private secretary) reached the city on February 20, Chinese New Year observances were still in progress. Consequently, no official of Imperial standing with access to Peking was on hand. In consultation with their Consuls, de Montigny and Robertson, respectively, it was agreed that they should form a party to proceed to the provincial seat at Soochow to deliver the notes directly to the Governor, Chao Te-ch'e. The official party was composed of the couriers, the Consuls, and the acting American Vice-Consul, A.L. Freeman,¹⁵ with the staff interpreter for each of the Powers represented.

15. Swisher, op.cit. p.377. n.14. For these events, as well as for others, Swisher is needlessly obtuse in his identifications of non-Asian personalities. Thus, he refers to "de Contrades" and "Robinson" and professes to be unable to identify the Frenchman "Min-t'i-ni". The British staff interpreter on this occasion was J.A.T. Meadows, a highly qualified linguist who vacillated between choosing a career in public service or in commerce.

The formal despatches of Oliphant and Robertson state that at the last moment these gentlemen extended an invitation to Lay to accompany them. On the mission's return, both highly commended the services he rendered.¹⁶ The French had initially vigorously opposed Lay's participation, but had been forced to bow to Oliphant's insistence.¹⁷ At the same time, while it was recognised that Lay (partly through a fortuitous development) had greatly facilitated the

16. Since this is the first occasion to refer to one of Lord Elgin's official despatches, it may be noted that for this period the official correspondence used was that in the Elgin archives at Broomhall. Lord Elgin's collection included: original drafts of all despatches from Lord Elgin; copies of the drafts; letter-book copies of all despatches; originals of correspondence and memoranda sent to the Foreign Office; Lord Elgin's copies of all despatches sent from London and from various officials at China stations; registers of all correspondence received and sent. All despatches - and enclosures - were reconciled with those printed in the "Blue Book", BPP [2571] "Correspondence relative to the Earl of Elgin's Special Missions to China and Japan, 1857-1859." In the citations which follow, only omissions from the "Blue Book" of particular significance are noted.

"E/B" No. 61 Elgin to Clarendon. (Lord Malmesbury had replaced Lord Clarendon at the FO but the news had not yet reached Lord Elgin). Ningpo March 18, 1858. Enclosure. Oliphant to Elgin. Shanghai March 5, 1858. Robertson's despatch to Elgin (Shanghai No. 2, March 3, 1858) was only delivered to Lord Elgin when he reached Shanghai and, presumably in consequence of its being "dated", was not forwarded to London.

17. Fredet, op.cit. p. 223. Also H. Cordier, "L'Expedition de Chine de 1857-1858" (Paris, 1905). p. 310 where an extract of Contades' report to Baron Gros, of Feb. 27, is reproduced.

contacts and the business with Chao Te-ch'e and his retinue, it was charged that, in one of the ceremonial exchanges, in order to curry favour with his Ch'ing employers, he subverted the sovereign prestige of Great Britain.¹⁸

H.B. Morse, whose information on the period contains numerous inaccuracies, and who was not overly sympathetic toward Lay, ascribes the incident not to any perfidy on Lay's part, but to a "blunder".¹⁹ Oliphant quickly developed a liking for Lay,²⁰ which may have prejudiced his judgment about him, but extracts from a confidential report he sent to Lord Elgin, just a few days after the return from Soochow, emphasised the significant contribution made by Lay.

...The more I saw of those upon whom the principal charge of matters would depend the more anxious I felt for the result and as I was determined to omit no precaution, at the last moment, it most fortunately occurred to me to take Mr. Lay. Mr. Robertson thoroughly agreed with me in the expediency of this measure. It was most justified by the result, not only do we owe our entire success to his tact and good management but it was the greatest comfort to have some really sound advice always at hand - the conduct of some

18. "NCH". No. 397. March 6, 1858, p. 127 and No. 398, March 13, 1858, p. 130. Another account is given by a "Correspondent" to the "Times". April 29/30, 1858.

19. Morse, "Conflict" p. 509, n.84. One of Morse's inaccuracies appears in his preceding footnote (p. 508, n. 83) where he writes "He was still borne on the list of the British Consular service, and at the same time was the servant of the Chinese government...."

20. L. Oliphant. "Narrative of the Earl of Elgin's Mission...." 2 vols. (Edinburgh, 1859). For the account of the Soochow trip vide I, pp. 189-213.

of our party rendering this doubly necessary....No opposition was made to our entering the city, and in consequence of Lay's former friendship with the Governor everything passed off smoothly.... Robertson did his best, but is as timid as a mouse [!]. There is an account of our trip in the Paper [NCH], but it is inaccurate and ends with a story about Lay and the Governors' cards, wh has been invented since our [interview?] by somebody who is jealous of him. I think I can detect the quarter from whence it emanated.²¹

Considering the position that Lay occupied, it would have been difficult to avoid censure from some quarter. What is perhaps more interesting, is that in the covering report of the Ch'ing Authorities transmitting the notes of the Powers to Peking, no mention whatsoever was made of Lay.²² Both sides, it would seem, were anxious to foster the enigma of Lay's dual role.

The diplomatic party, having achieved a "first" in sino-foreign relations - an official reception in the temporary provincial capital - acceded to Governor Chao's urging that the representatives leave, immediately on the completion of their official business.²³ Oliphant, however, took a two-or three-day tour of the environs of Soochow, with Lay as guide.²⁴ A week after their return to Shanghai Oliphant set

21. "E/B". Confidential: Oliphant to Elgin. Shanghai, March 9, 1858.

22. IWSM [S]. HF 18, 16b, 10-18, 10. Memorial: Ho and Chao: Recorded March 10, 1858.

23. Loc. cit.

24. Oliphant, op.cit. I. pp. 207-213.

off to rejoin Lord Elgin, who was slowly proceeding up the coast visiting some of the potential as well as established Treaty Ports, at Ningpo. It is conceivable that the favourable impression Oliphant gained of Lay was a factor in Lord Elgin's invitation to Lay three weeks later.²⁵

Most of the factors that contributed to Lord Elgin's decisions on this point were related to necessity rather than to choice. Given the comprehensive character of the diplomatic-military operations set in motion, an absolute minimum of two qualified interpreters was required, for Lord Elgin's staff.²⁶ When the Allies were ready to commence operations there were, in non-religious fields of activity, only eight or nine British subjects who were sufficiently qualified to fill the openings.²⁷ There was no indication that Lord Elgin ever contemplated using missionaries, although the plight of the other Powers with respect to linguists left them no other alternative.

25. T. Walrond, ed. "The Letters and Journals of James, Eighth Earl of Elgin". 2nd ed. (London, 1873). p. 232.

26. Lord Elgin sent Bowring an urgent appeal for additional student interpreters as soon as he reached Tientsin. As he commented "Messrs. Wade and Lay are very useful but I cannot multiply them indefinitely". "E/B". Enclosure, June 4, 1858, in Elgin to Malmesbury No. 122, June 10, 1858.

27. The basic information is derived from leads supplied by a retrospective article in the London "Standard", May 19, 1883 (quite possibly written by Sir T.F. Wade). Cf. also "Times" March 23/24, 1858. King, *op.cit.* p. 53, quotes portions of the "Standard" article without citing the date. Additional notes on eligible interpreters in 1858 in review article of S. Osborn's book "The Past and Future of China" (Edinburgh 1859) "Times" Nov. 9, 1860.

Among those who were qualified, T.F. Wade had been simply transferred from the Hongkong Superintendency to become Chinese Secretary of the Mission. The occupation of Canton under an Allied Commission forced Lord Elgin to assign H.S. Parkes to act as translator and political representative on the Commission.²⁸ C. Alabaster, a supernumerary, who had given early promise of proficiency, was delegated to accompany Yeh to Calcutta. W.H. Medhurst, Jr. was Consul at Foochow. Why this should have excluded him is not clear. M.C. Morrison was in too poor health to undertake the arduous duties the assignment entailed. Sinclair and Gingell, who had served as interpreters, were not experienced in the "court dialect" and were not a match for the remaining three candidates.

J.A.T. Meadows was Acting Interpreter at Shanghai and was a competent linguist. A linguist was required in Shanghai, but the failure of Lord Elgin to consider him as a candidate may be related to Oliphant's private report of his visit to Soochow.²⁹ Sinclair, who had previously been Interpreter at Shanghai could easily have been removed temporarily from his post at Ningpo.

Thus, when Lord Elgin reached Shanghai about March 25, the eligible candidates were reduced to two: T.T. Meadows, Vice Consul in charge at

28. Lane-Poole, I, p. 276.

29. Vide antea pp. 180-181

Ningpo and H.N. Lay. Thomas Meadows undoubtedly possessed all the necessary technical qualifications. He was competent in the "court dialect", he was an erudite scholar on Chinese affairs, and he was familiar with the forms of intercourse appropriate to contacts with Ch'ing officials.³⁰ His candidacy, however, was prejudiced by several considerations.

Although Meadows subsequently denied any complicity on his (or his brother's) part in the deed, Lord Elgin apparently believed that he had engineered reports which appeared in the "North China Herald" favouring Meadows' appointment as interpreter to the Mission before Lord Elgin had reached Hongkong. The first of these stated: "We hear it reported in several quarters that Mr. T.T. Meadows.....and Mr. H. Parkes.... are to be attached to Lord Elgin's Embassy to Pekin."³¹ A month later the following was published:

The selection of Mr. T.T. Meadows as one of the interpreters.....is a matter of more notice than the simple announcement. [There follows a long, sympathetic review of Meadows' "The Chinese and Their Rebellions".].

With such views of Mr. Meadows' writing, it follows naturally that we look upon his selection for the important post he is to fill, as a happy augury of the course which

30. "Standard" May 19, 1883. "Times" Nov. 9, 1860. T.F. Carter "The Invention of Printing in China...." (New York, 1925), p. xiii highly commends Meadows for a monograph he prepared on this subject for Lord Elgin in 1858. The original manuscript is in the Elgin collection at Broomhall. Meadows was one of the few men in the China Service who had attended university.

31. "NCH" No. 357, May 30, 1857. p.174

the Minister of England will adopt towards China; a course, founded not on temporary expediency, but on broad and great principles; firm, temperate and just.³²

"Firm, temperate and just" they may have appeared to "the Leading partner of a large Shanghae house"³³ but the course was not the one contemplated by the "Minister of England".

Meadows, innocent though he may have been of the promotional campaign on his behalf, did not improve his chances when he gave expression to his opposition to the foreign Inspectorate system. One of his charges indirectly impugned the honesty and integrity of the foreign inspectors. "...on passing through Shanghai a year ago, the representative of a large and old established house volunteered to me....that he could, through his Chinese people 'arrange for' duties under the foreign inspectorate, just as he could before its existence..."³⁴

Lord Elgin's instructions on this subject left much to his discretion. But Wade was his chief adviser on Chinese affairs and Lord Elgin became convinced that aside from practical advantages - a reliable source for

32. "NCH" No. 361, June 27, 1857, p.190.

33. "E/B" Meadows to Elgin. Private. Ningpo, April 15, 1858. Meadows asserted that it was only in Mar. 1858, that the "NCH" editor informed him who had been responsible for the published reports of 1857.

34. "E/B" Enclosure in No. 44, Elgin to Clarendon, Feb. 27, 1858. Meadows to Bruce, Feb. 2, 1858. Only a portion of Meadows' views on the Inspectorate system was included in the published version in the Blue Book. For confirmation of Meadows' charge, cf. "NCH" No. 521, July 21, 1860, p.115. [n.34] Also FO 228/220 Nos. 90. 91. (May 13 and May 14, 1856) Robertson to Bowring. Reporting discharge of inspectorate employé who had advertised to ship passengers and cargo on private account.

indemnity payments and a dependable revenue to effect the regeneration of the central administration - the British Government had an obligation to prevent foreign interests again victimising the Ch'ing government as had occurred in the case of the "Arrears of Duty"³⁵ question. In addition, when Lord Elgin reached Shanghai, he could not help but acknowledge that he was impressed with the relatively prosperous condition of the port.³⁶ He would, therefore, be more receptive to Bowring's recommendation:

I thank you for your note of 30 ult^o. I am pleased to find that Shanghae presents a picture as prosperous and promising as I represented to your Lordship. I believe much is due to the Inspectorship, - & wish it were introduced at Canton where now there is utter disorder in the collection of the duties & will continue to be unless we lend co-operative aid.³⁷

A final consideration which purportedly decided Lord Elgin against Meadows was the latter's failure to prepare some memoranda "....of your opinions on the various topics which are likely to furnish matter for negotiations with the Chinese Gov't....."³⁸ which Lord Elgin had personally requested. When it was already too late, Meadows excused himself on the ground of pressure of over-work and physical indisposition.³⁹

35. "E/B" No. 149 and No. 150. Elgin to Malmesbury. July 13, 1858.

36. "E/B" No. 89. Elgin to Clarendon. April 15, 1858.

37. "E/B" Bowring to Elgin. Private, Hongkong, April 5, 1858.

38. "E/B" Elgin to Meadows aboard "Furious". May 20, 1858.

39. "E/B" Meadows to Elgin, Ningpo, June 26, 1858.

But Meadows could not express himself on any subject unless it were voluminously, and it was apparent that his views were irreconcilable with those held by Lord Elgin.

It is possible that Lord Elgin did not decide to extend the invitation to Lay until he had had a chance to make a closer appraisal of him at Shanghai. Meadows believed that Lord Elgin, who did not deny the statement, had made a commitment to himself.⁴⁰ If this were true, it must have been a very qualified commitment, however, for Meadows was refused leave to accompany Lord Elgin from Ningpo to Shanghai.⁴¹ Since Lord Elgin must have been anticipating either immediately entering into negotiations at Shanghai (the notes delivered at Soochow set March 31 as a deadline) or proceeding to the mouth of the Peiho, it could have been awkward not to have Meadows on hand.

This would suggest that Lord Elgin was strongly inclined to the selection of Lay but that he felt under the necessity to appraise all the other candidates within the China Service before making his formal approach to Lay. At the same time, he was compelled to rationalise the selection of a Ch'ing employé. Lord Elgin was not in a position to restore Lay to a permanent post in the Queen's Service. Yet he

40. "E/B" Meadows to Elgin. Ningpo, April 15, 1858 and Elgin's reply, May 20, 1858.

41. "E/B" Bruce day-book. Entry for Fri. March 19, 1858.

could not ask Lay to jeopardise his career in China by forcing him to resign from the Inspectorate.

Before dealing with this rationalisation, which was still being formulated after the negotiations at Tientsin had begun, the factors favouring Lay's selection, besides those originating directly from his activities, should be dealt with. There should be no need to re-capitulate Lay's qualifications. The additional years of direct intercourse with Ch'ing career officials had improved his ability to employ the "court dialect". Since the basic objective of treaty revision was the improvement of conditions for carrying on trade and commerce, the knowledge and experience at Lay's disposal were unsurpassed by any other public servant in China in 1858. Apart from his technical qualifications, Lay's candidacy was supported by a number of influential people.

Wade, Oliphant and Bowring have already been mentioned. Bowring's recommendations may not have been all that helpful. The longer Lord Elgin was in personal contact with Bowring, the less he was willing to acknowledge that anything Bowring recommended should be taken seriously.⁴² Whether Parkes, when he was eliminated, made any direct recommendation on Lay's behalf is not known, but Parkes did have a good opinion of Lay.⁴³

42. "E/B" Frederick Bruce to Lady Augusta Bruce (his sister). Shanghai, April 3, 1858. See Appendix II for full text of this letter.

43. Lane-Poole, I. p.276

The majority of the merchant leaders at Shanghai may not have looked favourably on the selection of Lay. Some were not reluctant to voice their disapproval publicly.⁴⁴ But the leaders of the "respectable" houses were the hosts to many of the Mission staff.⁴⁵ Alexander Perceval, the senior director of Jardine's, who had been a steadfast supporter of Lay, was still at Shanghai. The influence, if any, was probably remote, but Frederick Bruce, Lord Elgin's brother, and second in the "chain of command", had been a colleague of G. Tradescant Lay in the early days of the China Establishment: Bruce having been attached to the Colonial Administration at Hongkong when G.T. Lay was Consul at Foochow and Amoy successively during 1844/45.⁴⁶ Finally, Robertson's animus of the first period of contact had all but disappeared. At any rate, when Oliphant suggested that Lay should join the Soochow retinue, Robertson "cordially concurred" and he supported Oliphant against French opposition.⁴⁷

Whatever were the considerations - and they were undoubtedly complex ones - that motivated the Ch'ing officials (of whom the principal one was Hsüeh Huan), they granted Lay's request for leave to accompany Lord

44. "NCH" No. 402 April 10, 1858 p.146.

45. Oliphant had been 'hosted' by Mr. Moncreiff - one of the Jardine's group. FitzRoy had a close liaison with Jardine's and, of course, Wade was "persona non grata" to the Dent, Beale & Co., faction.

46. Eitel, op.cit. p. 220.

47. Vide antea p. 177

Elgin to the North.⁴⁸ Lord Elgin, at least, might have interpreted this as a recommendation.

When all things were considered, then, Lord Elgin had little choice, but the selection nonetheless had to be rationalised. The first foundation stone in the process was built into the terms of Lord Elgin's invitation:

It would be very satisfactory to me if you could make it convenient to accompany me in the Furious on my present expedition to the North, as I consider that y. acquaintance with the system of the Chinese Customs House & y. familiarity with the language would be of material assistance to me at this conjuncture.⁴⁹

Lay could not (nor, of course, had the slightest desire to) refuse this "invitation" from the Queen's principal officer in China. There were, however, no conditions specified. Lay was not a member of the Mission⁵⁰ and the evidence discloses no offer at any time, while Lord Elgin was in China, of pecuniary remuneration. Indeed, the despatch to London in which Lord Elgin enclosed copies of his letter to Lay and Lay's grateful acceptance, stipulated that Lay "holds the office of Foreign Inspector at the Port of Shanghai."⁵¹ It is also significant, perhaps, that after referring to Lay's "tact in dealing with the Chinese",

48. "E/B" No. 90. Elgin to Clarendon, April 15, 1858. Enclosure. Lay to Elgin, April 9, 1858.

49. "E/B" "Ibid." Enclosure Elgin to Lay, April 9, 1858.

50. Oliphant, I, pp. 16-17. Footnote. Oliphant is in error not only as to date, but also in the assertion that Lay held any titled appointments dating from Shanghai.

51. "E/B" No. 90 April 15, 1858. Underlining added.

Lord Elgin reversed the order of his reasons for his selection. Lord Elgin's draft despatch was at first marked "separate", as though the affair were not really official business and also because this designation usually signified that the despatch was not to be released for public perusal. The copy to the Foreign Office was sent without this designation, but the Foreign Office must have been sensitive to the situation, for this despatch was not included among those published.⁵² Thus, the "invitation" and the "compliance" to use Lay's word, were consummated on the last day prior to Lord Elgin's departure for the North.

Although there is a considerable body of printed material on the developments of the campaign and the negotiations associated with the treaties concluded at Tientsin and Shanghai, there is still no single account that is exhaustive, accurate and objective in recording these developments. The account that follows, of necessity, is confined essentially to an analysis and appraisal of Lay's role. In this respect, it is convenient to deal with the period from the departure of Lord Elgin's Mission from Shanghai on April 10, 1858, to January 1, 1859, the date on which the entourage that visited Hankow returned to Shanghai, as a unit. It is also convenient to classify the discussion of Lay's role under three headings: the continuing stages whereby his dual

52. Nor, of course, were the enclosures published.

function of serving two masters was rationalised; the extent of his influence as a policy-maker during the course of two sets of negotiations; and Lay's performance as interpreter and negotiator.

Because of the conflicts between the diplomatic and military heads,⁵³ the confrontation between the Allies and the forces of the Empire was delayed for several weeks after the "Furious" (the Ambassador's flagship) left Shanghai. On the journey and while the vessels were anchored in the Gulf of Pechili, Lay was occupied in entertaining his associates by recounting his experiences with the Ch'ing Authorities at Shanghai,⁵⁴ and in assisting to prepare a draft text of a comprehensive treaty, "the new and the supplementary in one. Commercial regulations in full detail - with option for revision every seven years."⁵⁵

During the period of delay and until the Allied advance was temporarily suspended at Tientsin, Lay's activities were essentially those of an interpreter for the British forces. The fact that the

53. The subject is a fascinating one, but cannot be documented here. Almost a century after the events, the Navy was still fighting the engagement. Cf. D. Bonner-Smith and E.W.R. Lumby, eds. "The Second China War, 1856-1860. ([London] 1954). The last word has yet to be written on the subject.

54. "E/B". Bruce Day-book. Monday, April 12, 1858.

55. "E/B". Bruce day-book. References for both May 7 and May 8, 1858, refer to drafting of treaty. Quoted entry under latter date. The entries starting with May, 1858 through the day-books for 1859 and 1860, are written in Spanish. Bruce had served several years in Consular establishments in Latin America.

military forces were inadequately supplied with competent interpreters was a fortunate circumstance for Lay, for by dint of providing essential services for both branches of the expedition, he was enabled to appear detached from the conflict between those branches.⁵⁶ He was one among, but not exclusively one of, the diplomatic branch - a type of role in which he was becoming an admirably proficient performer.

Despite diplomatic controversy on the question of the Ch'ing representatives' (Kuei-liang and Hua-sha-na) credentials, the preliminary rounds of the negotiations were able to get under way precisely because Lord Elgin had not accredited Lay as an official member of his Mission. The Ch'ing Authorities, whether responding because they had an intimation of what was expected of them,⁵⁷ or because they wished cleverly to exploit a situation which might ^brebound to their advantage, took the fatal step of requesting Lay to consult with them.⁵⁸ The request from the Imperial Commissioners was doubtless also affected by the refusal of Lay to discuss the problems with respect to the credentials or to the demands made by the

56. "E/B". Elgin to Seymour, Aboard "Furious" May 20, 1858. "I send this note by the hand of Mr. Lay and beg to put him at your disposal if he can be of service." Seymour did make extensive use of Lay and remembered him handsomely when Lay applied for a C.B. in 1862. Vide chapter on 1862. Lay was also interpreting for Elgin. Cf. "IWSM" [S] pp. 470-471.

57. "E/B" No. 133 Elgin to Malmesbury. June 18, 1858. Cf. also Oliphant I pp. 343-44.

58. "E/B" No. 129 Elgin to Malmesbury June 14, 1858. Enclosure. Imperial Commissioners to Elgin. June 5, 1858. Cf. also Bruce day-book. June 5, which notes "Lay is going as a Chinese employé."

British with any other officers but the Commissioners.⁵⁹

Whatever may have been the subtleties of the initial manoeuvres the Commissioners, in their reports to Peking, from the outset of the direct consultations referred to Lay as the Assistant Chinese Secretary for the British Mission.⁶⁰ At Tientsin, however, he was initially treated with special consideration, even to the extent of being confidentially informed of all that had passed between the Commissioners and the Plenipotentiaries of the other three Powers at their respective introductory meetings.⁶¹

Lord Elgin on his part, during the first days of consultations with the Ch'ing Authorities, may have been convinced that he had achieved his objective of having Lay accepted as a "Chinese employé" whose prior services gave "him a claim to the confidence of the Chinese officials greater than perhaps any other European possesses."⁶² In reviewing for the Foreign Office the events of that early period, however, when Lay by his behaviour left no doubt as to the interests he represented, Lord Elgin

59. "E/B" Bruce day-book. June 5, 1858. On June 4, Bruce notes that the Ch'ing secretaries told Lay they would visit him on the morrow. It was after his refusal to carry on discussions with them that the Commissioners' request was sent.

60. "IWSM" HF: 27,5-28,8. Memorial. Recorded, June 7, 1858. Swisher, pp. 480-81, only gives first five lines. Continuation refers to first interview with "Han language assistant official Lay." The Commissioners do not mention their request for Lay.

61. "E/B" No. 129, op.cit. Enclosure: Lay's report of conversations with Pien on June 7. Marked "confidential" not published in Blue Book.

62. "E/B" No. 133 op.cit.

specified that he acceded to the Commissioners' request "to send my Assistant Interpreter Mr. Lay".⁶³ On June 12, following complaints from the Commissioners about Lay's unbecoming behaviour towards them on June 10, a communication was sent by Lord Elgin - prepared in an English draft by T.F. Wade for transcription into Chinese - in which reference was made to the despatch of the "U[nder] S[igned's]....ass't Chinese Sec^y Mr. Lay to wait upon their Excellencies on the morning of the 6th inst."⁶⁴

From June 10 until the conclusion of the negotiations at Tientsin on June 26, Lay's role was confined to that of serving the British Mission, although Lord Elgin retained his conception of the role he wished Lay to play. Whereas prior to June 10, Lay had on a number of occasions visited the Commissioners' Yamen unaccompanied by any other foreigner, after this date he was always accompanied by at least one other member (usually Wade or Bruce) of the British Mission.⁶⁵ In fact, he appears to have become so closely identified with the Mission that at one point there was speculation within the Mission that Lay would accompany Bruce when the latter carried the signed treaty to London for ratification.⁶⁶

63. "E/B" No. 129 op.cit. June 14, 1858.

64. "E/B" No. 134 Elgin to Malmesbury, June 18, 1858. Enclosure Elgin to Commissioners June 12, 1858. Although it was in reply to a complaint from the three high officials, the communication was addressed only to the Imperial Commissioners, Kweiliang and Hua-sha-na.

65. The citations are too numerous to list. The assertion is derived from a correlation of Oliphant, Elgin's official despatches and Bruce's day-book.

66. "JMA" II.A.5 (2)(23) P 372. Robert Jardine (A. Perceval left Shanghai about April 27-28) to Joseph Jardine. July 5, 1858.

That this was only speculation and that Lord Elgin intended that Lay should resume his career in the Ch'ing service was clear before the Mission departed from Tientsin. It was while the Mission was still at Tientsin that Lay was given the task of impressing upon the Ch'ing Authorities the need for the prompt assignment of suitable officials to Shanghai to negotiate a supplementary codicil fixing the details of commercial relations. Lay, on Lord Elgin's instructions, went so far as to recommend, specifically, Chao and Hsüeh, the two officials with whom he had the most cordial connections.⁶⁷ Since it was virtually inconceivable that these negotiations could have been carried out without the presence of Lay and since there would be no justification for retaining Lay as a member of the Mission once it had returned to Shanghai, the Tientsin initiative implied that Lay would be reverting to his former role.

The reversion was achieved with a minimum of time wasted but it required a further exercise in rationalisation. In September, Ho Kuei-ch'ing felt it expedient to explain Lay's position as follows:

H.N. Lay is the most crafty of the barbarians. In the winter of [1854-] 1855, the former governor, Chi-er-hang-a sent a [communication] to the said chief [Bowring] to employ him as Shanghai Customs Commissioner with generous pay. [.....] The said barbarian was afraid of being disliked by [the] various [.....] barbarians, so he

67. "IWSM" HF 28: 52, 3-52 b,5. Memorial of Kuei-liang and others. Recorded, July 10, 1858. Refers to visit from Lay of July 1, 1858.

also accompanied them to Tientsin and made a great display of violence and ingratiated himself with the barbarian chief [Elgin] in order to show his public spirit. When he returned to Shanghai he was as compliant as ever in our employ. "Who bells (the tiger) can remove the bell;" so we must continue to hold him responsible for all the barbarians.⁶⁸

Lay, actually, had lost no time in "reporting" to Hsüeh the results of the negotiations at Tientsin and in urging him to solicit Ho's support for the recommendation made before the departure from Tientsin.⁶⁹ By the time Ho transmitted the whole of Hsüeh's report, the decision had already been made to give approval to the idea of opening discussions on the supplementary treaty, but the discussions were only to serve as part of a general policy of prevarication.⁷⁰

The delaying tactics employed by the Imperial Court had the indirect result of expediting Lay's resumption of his role as a Ch'ing official. When Lord Elgin became aware in late July that formal negotiations were to be delayed, he decided to visit Japan with the object of negotiating a treaty with the Japanese. He did not, however, take Wade with him.⁷¹

68. IWSM HF 30: 45b, 9-46, 4. p.522. Extract from Ho Kuei-ch'ing memorial. Recorded in Peking Oct. 5, 1858.

69. IWSM HF 29, (Extract) 23, 3-23b, 3. Ho Kuei-ch'ing memorial. Recorded. Aug. 2, 1858.

70. Two edicts were issued on July 15, 1858, in reply to the Commissioners' memorial of July 10, 1858 (cf n. 68). One to the Grand Secretariat (Swisher, p.516) and one to the Grand Council, which included more detailed instructions on the policy to be pursued. HF 29: 8, 8-8b, 10.

71. IWSM HF 30: 11, 1-12b, 4. Ho Kuei-ch'ing memorial. Recorded Aug. 8, 1858.

It is true that Wade was not qualified (nor was Lay, for that matter), to act as an interpreter in Japanese. This would not necessarily have prevented him from playing an effective part in negotiations. The crux of the situation, rather, was that as informal discussions were taking place in Shanghai, an official, qualified member of the China Mission had to remain there to work out the numerous details with the qualified Ch'ing representative - (according to Lord Elgin's analysis) Lay.⁷² Thus, precluded from accompanying the Mission to Japan, on the one hand Lay was obliged to resume the burden of his responsibilities as Inspector and, on the other hand, he was expected, in the discussions, to act as adviser to his employers.

In this situation, as in the situation at Tientsin, the local Ch'ing officials accommodated themselves to Lord Elgin's manoeuvres. The reports to Peking, while sometimes equivocal as to Lay's function, invariably identified him as an official representative of the British.⁷³ The most striking example of this pattern may be found in the events connected with the formal negotiations. Lord Elgin directly requested

72. Wade and Lay may have wished to accompany the Mission to Japan, but Elgin also had to limit his entourage because of lack of accommodation. "E/B" No. 164. Elgin to Malmesbury. July 30, 1858.

73. In the communications of the officials dealing directly with the British covered by IWSM HF: 23-31 (end of May to end of Nov., 1858) Lay is identified as an interpreter, a linguist, as the "assistant Chinese Secretary" and even as an English "chief". While in the summer of 1858, it was officially reported that he had been appointed to an office in the customs, no official Chinese title is ever attached to his name.

the Imperial appointees to permit Lay to sit on the tariff commission, which was agreed to.⁷⁴ In the report of these specific discussions, the Imperial officials noted that Ho had appointed Hsüeh and Wu Hsü (expectant prefect at Shanghai) as the Ch'ing representatives to carry on the discussions with Wade and Lay as the representatives for the other side.⁷⁵

As final evidence of the rationalisation of Lay's role, effected in the period of treaty negotiations, it is worth quoting at length a memorandum prepared by Bruce at the behest of the Foreign Office, after his return to London, respecting staff changes to coincide with the commitments entailed in the new treaty. Bruce's recommendations must have been primarily based on ideas discussed with Lord Elgin before the former's departure from Shanghai in mid-July, 1858. Any additional information at Bruce's disposal could only have been based on correspondence that left Shanghai no later than mid-August.

....It would have been desirable to have joined with [Wade] at first, Mr. Lay, who speaks the Mandarin dialect with fluency, and possesses in a high degree the power of seizing the ideas of his Chief, and of conveying them in the form best calculated to insure their reception by the Chinese. But I am informed that he is likely to be called on by the Chinese Government to organize their Custom-houses according to the plan adopted at Shanghai and so successfully administered hitherto by Mr. Lay himself. It is not expedient

74. "E/B". Enclosure in No. 189. Elgin to Malmesbury. Oct. [16], 1858. Elgin to Ch'ing officials.

75. IWSM. HF 30; 42,2-43b,5. (p.42, lines 8-9 for the specific reference). Memorial of the Manchu Commissioners and Ho Kuei-ch'ing. Recorded Oct. 3, 1858.

that he should be induced to decline this task, for the employment of an able and upright foreigner in an important branch of Chinese administration is the first step towards the regeneration of the Empire; and will greatly facilitate our future intercourse. I can state that in bringing Mr. Lay so prominently forward in the negotiations at Tientsin, and in placing him in a position to suggest confidentially to the Chinese the course they should pursue, Lord Elgin hoped that the idea of retaining him as their adviser in foreign questions would present itself to the minds of the Chinese Commissioners.⁷⁶

Willingly or unwillingly, as the memorials of the officials attest, they were the recipients of Lay's advice - advice not infrequently formulated by Lord Elgin. As the latter confided to Lady Elgin: "I have also through a secret channel (Lay) had the hint conveyed to them that if they do not give me full satisfaction at once I am capable of going off to Tientsin again - a move which would no doubt cost their heads to both Kweiliang & Hwa Shana."⁷⁷

The last important development in this period, Lord Elgin's journey up the Yangtze to Hankow - a concession granted in exchange for a modification of the clause relating to the permanent residence of a minister at Peking - typifies the enigma of Lay's dual role. There is nothing to indicate whose initiative was responsible for his joining the

76. FO 17/306. Memorandum signed by Bruce as at London, Oct. 21, 1858.

77. "E/B". ms. Elgin to Lady Elgin. Entry under date of "Shanghai. Sunday 10th Oct, 1858". Elgin felt the Commissioners were becoming obstructive and he also was disturbed by news of unsettled conditions in and around occupied Canton.

exclusively British expedition of armed naval vessels. There were good practical reasons, if he were to become the organiser of all treaty port Custom-houses, for his acquiring knowledge, in his capacity as an Ch'ing employé, of the inland ports. He doubtless gained valuable knowledge in this connection, but his principal functions were carried on in the capacity of British interpreter whether the contacts were with Ch'ing or Taiping officials.⁷⁸ Official records may one day, perhaps, disclose that he was simply on a "busman's" holiday.

The by-play that was going on between the Ch'ing and British officials with respect to the nature of Lay's role did not extend to the representatives of the other Powers. To them, whether at Tientsin - where the Russians were included with the French and Americans - or at Shanghai, insofar as Lay's activities infringed on what they conceived to be their respective interests, he was an agent of the British Government. Their communications, whether censorious complaints as at Tientsin or unstinted commendation as at Shanghai, were always addressed to Lord Elgin and never to the Ch'ing Authorities.

The by-play was taken up by the non-official sector of the foreign community. Those who had been anti-Lay in the pre-treaty period

78. "E/B" No. 1. Elgin to Malmesbury. Jan. 6, 1859. Incorrectly noted as Jan. 5 in Blue Book, "Mission" p.440. Also IWSM. HF 34; 23b,6-25,5. Sheng-Pao and Weng T'ung-shu memorial. Recorded Feb. 21, 1859.

identified him as an official in the employ of the Ch'ing government.⁷⁹ At the time, and especially after the repulse at Taku in 1859 of the Allied missions seeking to proceed to Peking to exchange ratifications, they discerned his nefarious hand in all the restrictive provisions incorporated in the 1858 treaties.⁸⁰ In some evaluations, Wade was tarred with the same brush, since he too had received generous emoluments in the employ of the Ch'ing.⁸¹

Those who had been pro-Lay - with one notable exception - identified him simply as an important member of Lord Elgin's Mission. When he received special notice, it was to call attention to his masterly tactics in thwarting the crafty efforts of the Ch'ing Authorities to nullify Lord Elgin's objectives.⁸² The one exception, referred to above, was the house of Jardine, Matheson & Co.

The temporary successors to Alexander Perceval were James Whittall and Robert Jardine.⁸³ Jardine, who was normally a resident of Hongkong, was unfavourably disposed toward Lord Elgin, possibly because of the latter's undisguised antipathy toward expatriate merchant princes. This

79. [Scarath] op.cit. pp. 309-310.

80. "Overland Friend of China" (about July 22). Letter from correspondent dated July 20, 1859. "London and China Telegraph" I Sept. 14, 1859. p. 461. "London and China Express" I, Oct. 10, 1859. p. 515 [Scarath] op.cit. p. 314. Michie, op.cit. p. 337.

81. The "Friend of China" and [Scarath] above, both include Wade.

82. Cf. especially. "Times" Sept. 13, pp. 8-9. Based on correspondence from Tientsin of June 26. Vide also King, op.cit. p. 50.

83. Perceval left Shanghai about April 27-28. "JMA" II A.5 (2)(23) P 352. 4 May 1858 James Whittall to Joseph Jardine. The earliest correspondence that has been noted from Robert Jardine is dated from early July, just prior to the return of the Mission from Tientsin.

appeared to have an indirect effect on the relations between Jardine and Lay, for while Whittall and Jardine in letters to Hongkong frequently referred to written and oral contact with Wade and G.H. FitzRoy (an attaché with the Mission) throughout the events from April to November, 1858, Lay was not mentioned at all.⁸⁴

The attitudes described above help to explain the disparity in interpretations of the extent of Lay's influence on the formulation of policy. In his own literary productions (pamphlets and letters to the press), particularly those published from 1864 on, Lay tended to exaggerate his own influence.

As far as basic policy was concerned, the public record is conclusive as to who made the decisions. Private correspondence provides additional confirmation that the decisions in China were made by Lord Elgin and that the decisions with respect to those issues which became the crucial ones - the permanent residence of a minister at Peking and the "opening" of the interior to foreign commercial enterprise - were made before Lay was in a position to exert any significant influence.⁸⁵ His counsel and his assertive voice were undoubtedly heard, but since his own ideas were derived from his seniors in the public service (Wade and

84. "JMA" II.A.5(2)(23) P 353 May 5, 1858 P 359, May 29, 1858; P 375, July 7, 1858, passim.

85. Vide postea. Appendix II.

Parkes, and thus, indirectly, Alcock), they were not singular. It also taxes credibility to assume that Lord Elgin's decisions would hinge upon the ideas expressed by a young man in his twenty-sixth year.

In this connection, a more credible analysis of the question could be based on a division between substantive and procedural policy. In the substantive sphere, Lay's influence in formulating secondary, as distinct from basic, policy was of much greater significance. His specific contributions to the formulations of the general commercial provisions of the Tientsin Treaty are obscure, though it is certain that he assisted in the procedure.⁸⁶ Wade was also in attendance when these provisions were under consideration and while his experience as Inspector at Shanghai had been brief, he had continued to be the advocate of policies laid down during his tenure.

Lay's contribution to the supplementary provisions formulated at Shanghai was much clearer. In the first place, his labours were publicly acknowledged by the three envoys.⁸⁷ In the second place, his first-hand knowledge of the commodities exchanged and his familiarity with the body of statistics accumulated over the four-year period of the Inspectorate made it possible to adapt the provision for a five per cent. ad valorem

86. "E/B" Bruce daybook. Entries for May 7 and May 8, 1858. In the former entry Bruce refers to "Lay".

87. "E/B" No. 203. Elgin to Malmesbury. Nov. 6, 1858. No. 205. Same to same. Nov. 8, 1858. Enclosure from Wade and Oliphant to Elgin. Nov. 6, 1858, No. 207. Same to same. Nov. 8, 1858. Enclosures: Gros to Elgin. Nov. 3, 1858 and Reed to Elgin, Nov. 6, 1858.

tariff to a comprehensive itemised list of imports and exports with common sense and realism.

But it should be recorded that others also contributed significantly to the supplementary provisions. S. Wells Williams, whose knowledge of the commodity trade was at least as comprehensive as Lay's, was also an active member of the "commission". His invaluable contribution was acknowledged at the time,⁸⁸ but perhaps because the supplementary provisions rather surreptitiously legalised opium, the American emphasis on participation has been down-graded. Wade too was a member of the "commission". The record of his contribution has been obscured largely because every effort was made to give the impression that most of the initiative for the provisions came from the Ch'ing side. In fact, among Lord Elgin's private papers, there is an English memorandum which purports to be the draft of proposals put forward by the Ch'ing Authorities. The draft, with marginal notes, is a joint production of Wade and Lay.⁸⁹ One may conclude that the obvious origin of the memorandum dictated that it should never become part of the official record.

88. "E/B" No. 203. Op.cit. Enclosure. Wade to Elgin. Nov. 5, 1858 and Dennett, op.cit. p.323.

89. "E/B" Reference to the "Ch'ing memo" was made in an undated memo prepared by Wade, included in No. 192, Elgin to Malmesbury. Oct. 22, 1858. The ms English copy of the "Ch'ing memo" is undated, does not bear the usual signification that it is a translation, does not have a corresponding Chinese text among Lord Elgin's papers, and is not listed in Lord Elgin's official register of communications received. The ms is in Wade's handwriting, with interlinear and marginal notes in Lay's.

It is of course important to emphasise these points for, while even some of Lay's contemporaries were inclined to exaggerate his contributions, many of those who continued to reside in China during the balance of his relatively brief career were not so inclined to forget the contributions of their compatriots or colleagues.

Thus far, the problem of the opium trade has in this study been all but deliberately ignored. This, of course, is a consequence of the peculiar character of the trade - officials on all sides refused to acknowledge its existence, while equally on all sides, it was condoned. The Inspectorate system did nothing to alter the situation. On one occasion early in Lay's tenure, the Taotai had sought to have a tax imposed on opium landed or stored at Shanghai. This had aroused such a hue and cry that the attempt was abandoned. The result, however, was that the Taotai and Lay collaborated to prevent non-Chinese from having anything to do with the trade within the confines of the Inspectorate's jurisdiction. In addition, customs' launches were stationed at Woosung for surveillance to ensure that non-contraband or other contraband articles were not smuggled through the opium market.⁹⁰

90. FO 228/196. Robertson's despatches to Bowring, Nov. 55 (30/8/55), 56 (2/9/55), 65 (27/9/55) and 91 (6/11/55). For Bowring's views on this series of events cf. FO 17/232 No. 301 to Clarendon, Sept. 9, 1855. For the Government's policy cf. FO 17/242. Clarendon to Bowring Nos. 10 (2/1/56) and 48 (8/2/56).

Throughout 1856 to early 1857, several more attempts were made to levy a tax on opium, usually coupled with a false rumour that Imperial authorisation of the impost was imminent.⁹¹ The last of these, well before the treaties of 1858, elicited from Lord Elgin the following comments:

.....the Chinese authorities are putting a duty on opium as a means of raising a Revenue. This, if true, points to a solution of one of our greatest difficulties.⁹²

The objective of British policy in this regard from pre-Nanking Treaty days had been to persuade the Ch'ing government to "legalise" the trade. Because of fiscal and commercial considerations and because the British Government was in no position to enforce the Imperial ban on the trade, the position had been that as long as the trade was carried on outside the zones of treaty port jurisdiction, it was beyond the range of official knowledge.⁹³

This was the British attitude that continued to prevail at Tientsin in 1858. However, W.B. Reed, the American Envoy, following what he conceived to be his instructions, notified the Imperial Commissioners that he intended to include a provision in his treaty citing opium as a contraband commodity. When Lay received this information from his Ch'ing

91. "JMA" II.A.2 (37) A. Perceval to Jardine's Hongkong. No. 893 - 14/7/56; 928 - 7/10/56; 941 - 21/10/56; 954 - 10/11/56.

92. "E/B" Ms. Elgin to Lady Elgin. Extract from entry for May 15, 1857.

93. Fairbank, "Trade". Ch.13, passim.

informants and transmitted it to Lord Elgin, the latter sent Bruce to discuss the question with Reed and Putiatin (who was being capricious). Lord Elgin subsequently visited both envoys to dissuade them from referring to opium in their treaties.⁹⁴

It need only be pointed out here that although Lord Elgin personally found the trade reprehensible, he nevertheless convinced Reed that it would be both injudicious (in that virtually every major American house depended for its existence on the opium trade) and hypocritical (since the Americans would take advantage of the British treaty and since the American government would not police its nationals to enforce the ban) to carry out his intention. Lay later claimed that no discussions on the issue took place at Tientsin, but he was careful to refer only to the absence of any reference to the subject in the printed Parliamentary Papers.⁹⁵

There is nothing among the official or private papers connected with British activities at Tientsin to indicate that the subject was mentioned in the discussions between the Ch'ing and British officials. When the tariff schedule was being discussed at Shanghai, opium became a pivotal topic. The initiative appears to have come as much from the local Ch'ing officials, who were desperately in need of additional revenue to be used

94. "E/B" No. 124 (Confidential) Elgin to Malmesbury June 10, 1858, enclosing, as well, Bruce's confidential memo, of the same date, reporting on his visit.

95. "Times". Oct. 22, 1880 (6c). Letter from Lay.

to combat a mounting Taiping resurgence, as from either Lay or Wade.

At first the issue hinged on the amount of "tariff" to be imposed; the minimum demand of the Ch'ing officials was higher than the five per cent. ad valorem specified by the general treaty. With the arrival of the Imperial Commissioners, prohibition again became the order of the day.⁹⁶ Ultimately, however, at the last discussions, the sanction of the Imperial Commissioners coincided with a concession made by Lord Elgin on the resident minister issue. But it is clear that Lord Elgin's concession was in exchange for authorisation to make the Yangtze trip and had no connection with the opium question.⁹⁷ The sanction of opium

96. The uncertainty as to whether opium would be included is reflected in "JMA" II.A.5 (2)(23). Letters of Robert Jardine and James Whittall to Joseph Jardine from July through October, 1858. Jardine's at Shanghai was receiving information directly from Wade and FitzRoy. Prior to the arrival of the Imperial Commissioners at Shanghai, Ho Kuei-ch'ing memorialised recommending removal of prohibition on opium ((IWSM(S) HF 31; 18,9-19b,1. Recorded Oct. 9, 1858)). The edict replying to this indicates that the Commissioners were instructed to preserve the prohibition ((IWSM(S) HF 31; 21b,6 - 22b,9, Oct. 13, 1858)). After the arrival of the Commissioners, Ho again memorialised recommending legalisation. (Vide ~~postea~~, n.98). In his letter of Oct. 20, 1880, vide antea n.95, Lay insisted opium was included on the initiative of the Chinese. Lay's assertion was confirmed by Oliphant in a supporting letter which appeared in the "Times", Oct. 25, 1880 (10c).

97. "E/B" No. 216 (and enclosures) Elgin to Malmesbury, Nov. 5, 1858 [sic]. Although drafted prior to despatches bearing lower numbers, the length of this despatch and of its enclosures suggests that it was delayed in preparation.

was thus an independent Ch'ing decision and one can only surmise that the Imperial Commissioners, convinced of the rational arguments in favour of this step, hoped it would be interpreted as part of the price of Lord Elgin's concession.⁹⁸

In this respect, if in no other, Lay was a champion for the good name of Lord Elgin. Throughout the remainder of his life, Lay defended Lord Elgin as well as the "British" in general against the charge that "legalisation" had been forced upon the Chinese under the threat of British guns. He had a tendency to manipulate the facts, but his basic argument was valid.⁹⁹

To have ignored altogether any reference to this issue, which has always received an unwarranted amount of attention in accounts of this period, would at best have been indiscreet. Perhaps the only effect of this reference is to substantiate in a negative way the limited scope of Lay's influence on the formulation of substantive policy.

98. "IWSM" (S) HF 31; 33b, 6 - 36, 2. Ho Kuei-ch'ing memorial, recorded Oct. 19, 1858. Ho again indirectly recommended the legalisation of opium and noted that removal of "the opium prohibition or not [.....] is neither here nor there to the barbarian chiefs or barbarian merchants" (extract, Swisher, p. 530). When the Ch'ing negotiators memorialised on the tariff settlement, they made no mention of opium, but included notice of the Yangtze trip. This last so infuriated the Emperor that had any news of the opium arrangement seeped through, it might well have been considered to be of secondary importance. "IWSM" HF 32; 15,8-18,6. (Swisher, in full pp. 539-542). Memorial and edict both recorded Nov. 24, 1858. The full text of the settlement does not appear to have reached Peking before the end of January, 1859. cf. Swisher, pp. 548-552.

99. In addition to his defence of 1880, Lay responded to the charges of the anti-opium publicists throughout the period 1891-1895. Besides numerous letters which appeared in the "Times", he composed and published a "blue book": "Note on the Opium Question" (London, 1893).

The extent of Lay's influence on procedural policy ought also to be evaluated from two vantage points. There was a whole range of procedural policy which was exclusively the prerogative of the diplomatic and military chiefs of the Allied expedition. There was another range, encompassing the actual negotiations, in which Lay's influence, as far as the British were concerned, was a pre-dominant feature.

The ability of the diplomatic and military chiefs to work out mutually agreeable tactics and strategy was affected by jealousies and conflicts of interest which seem to be customary features of operations of this kind.¹⁰⁰ One aspect only of Lord Elgin's approach has a direct bearing on the evaluation of Lay's behaviour, especially during the diplomatic negotiations at Tientsin.

Lord Elgin embarked on his duties as chief of the Special Mission in 1857, extremely sensitive to the strictures of his critics in Britain. In the face of violence and the threat of insurrection during his terms successively as Governor of Jamaica and Governor-General of British North America, Lord Elgin had refrained from the employment of repressive police action and had opted for a policy of conciliation to foster responsible self-government. His opponents tended to disparage the

100. As Elgin noted, the situation was "novel" in one respect, ".... it has rarely happened that a civil Englishman in a situation like mine has been held back [by?] the unwillingness of the military or naval authorities to act. The more ordinary difficulty is that of restraining them." "E/B" Mss Elgin to Lady Elgin. Entry June 1, 1858.

salutary effects of his policy and to charge that he lacked sufficient fortitude and determination to employ extreme measures to protect the vital interests of the Empire.¹⁰¹ Since Lord Elgin was still a comparatively young man, eligible in many respects to be considered a potential prime minister, he set out determined to disprove the allegations of his critics.

While he was thus anxious to demonstrate his capacity for fortitude and determination, he was too much the sensitive and cultured aristocrat to permit himself to lose his sense of proportion or, once he had become acquainted with it, to blind himself to the social and cultural achievements of Chinese civilisation. In consequence, he periodically felt repugnance when, as was all too often the case, he found the predatory and avaricious members of the foreign community oblivious to the cultured sensitivities of their unwilling "hosts", and when the military forces associated with his mission indulged in needless violence and wasteful destruction of life and property.¹⁰²

Nonetheless, by the time it was possible for him to proceed to Tientsin, he was prepared to brook no opposition to a speedy fulfillment

101. "E/B" Bruce to Elgin. Private. London. Nov. 8, 1858. "One satisfactory result of the Eastern expedition has been the putting your character for decision and firmness beyond question..... The most ignorant and malevolent are forced to confess now that the existence of the qualities they professed to call in question, is put beyond a doubt." Cf. Parkes to Lockhart, March, 1857. Lane-Poole, op.cit. I, p.283.

102. "E/B" Ms. Elgin to Lady Elgin. Letters-journal 1857-'58 passim. No. 86 Elgin to Clarendon April 9, 1858.

of his diplomatic mission. On May 27, he tactfully tried to suggest to his military colleague, Admiral Seymour, that he desired to have additional forces called up from their Hongkong-Canton station so that they would be available should it be necessary to press an offensive against Peking.¹⁰³ In the atmosphere prevailing, the Admiral chose to ignore the tactful gambit and only acted after Lord Elgin addressed a formal request to him on June 1.¹⁰⁴ By his attitude and his action, therefore, Lord Elgin conditioned the atmosphere in which the Tientsin discussions - which did not officially commence until June 4 - were to take place.

The relevance of these matters to Lay's subsequent behaviour in his contacts with the Ch'ing Authorities is self-evident. From his

103. "E/B" Ms. Elgin to Lady Elgin, June 1, 1958. "However, the present plan is that we remain here to treat with the new Commissioners if they have sufficient powers, and if they have not we shall move on to Peking when the Troops arrive."

104. Adm. 50/281. Adm. Seymour to the Admiralty. June 1, 1858. Enclosure. Elgin to Seymour. June 1. Enclosure. Seymour to Elgin. June 1, noting that troops would be sent for on June 5. That the request was sent was noted by both Elgin and Bruce. "E/B" Elgin to Malmesbury. Private. June 4th, 1858 (Elgin also noted: "The French Admiral has already sent for his land forces from the South...."). ms. Elgin to Lady Elgin June 4, ms. Bruce to T.C. Bruce (a younger brother) June 1-4, 1858. "We don't know whether a further advance will be necessary to obtain the substance of the concessions we ask. The Fury starts to-day for Hong-Kong to order up as many troops as can be spared, so as to employ force if necessary, ~~con~~ strengthen negotiations....."

earliest meetings with them, before relations had become strained, Lay sought to impress upon them the need for urgency in arranging a satisfactory treaty at Tientsin and the consequences that would follow if Lord Elgin were dissatisfied with the pace of the negotiations.¹⁰⁵

Lay's own attitude and actions, as reflected in his behaviour, were highlighted by three periods of crises: June 8-11; June 24-26; a brief, but distinctive, crisis again on June 26. The first crisis centred on the desire of Lord Elgin that the accredited Ch'ing plenipotentiaries should acknowledge formally, at the earliest moment, those of his general terms of settlement which they were prepared to negotiate without reservation. He was ready to accept limited delay for three reasons. He wished to be absolutely certain that the Commissioners understood the implications of the terms.¹⁰⁶ He was determined that the formal documents should bear a seal attesting to the "full powers" of the Commissioners.¹⁰⁷ He felt that the Admiral would not agree to

105. "E/B" No. 129. Elgin to Malmesbury. June 14, 1858. Enclosing copies of reports submitted by Lay on his meetings. See especially report for June 6 in which Lay informed the Chinese secretary Pien that troops had been sent for and added "if they preferred war, why, they would have it." The threat was again repeated on June 8.

106. "E/B" Bruce day-book. June 5, 1858. No. 133. Elgin to Malmesbury. June 18, 1858.

107. Walrond. op.cit. p. 252.

a resumption of the military offensive until the requested reinforcements arrived.¹⁰⁸

Lay discovered from his first "unofficial" contacts that the officials were quite aware of the implications of Lord Elgin's terms, and that their strongest opposition was against the resident minister provisions.¹⁰⁹ At the start, he ascribed their tactics of vacillation to a design on their part to "use barbarians [the Russians and Americans] to control barbarians [the British and French]". He adopted the technique utilised by all his experienced compatriots, and since adopted by Lord Elgin himself,¹¹⁰ and acted the part of "the uncontrollably fierce barbarian". He aggressively pressed the British advantage according to the dictum, "keep your superiority never be beat even in chaffing."¹¹¹

108. "E/B" ms. Elgin to Lady Elgin. June 1, 1858.

109. "E/B" No. 129 op.cit. Enclosure. Lay's report on meeting of June 6.

110. Walrond, op.cit. p. 251.

111. "E/B" Bruce day-book. April 12, 1858. Elgin expressed a similar attitude on June 5, 1858. Walrond, op.cit. p.251. That Lay was extremely aggressive has been confirmed by his own reports as well as by those of the Ch'ing and other foreign participants in 1858. His conduct, however, was not exceptional. Cf.; e.g. "IWSM", HF 60: 1,3-3,6. Memorial of Kuei-liang, Heng-fu and Heng-ch'i (Ch'ing negotiators in 1860). Recorded Sept. 6, 1860. Esp. p.3, lines 3-4 "....additionally on this occasion, the Barbarian Chief Parkes' arrogant disposition was twice as extreme as that of Wade and Lay previously."

It was true that the Russian envoy, Count Putiatine, through insinuation, and the American envoy, Reed, through ineptitude, were giving the Commissioners and their subordinates the impression that the envoys would use their good offices to intercede on behalf of the Imperial interest. However, Lay's efforts were so far successful that after three days of discussions, he extracted a promise from the Commissioners that on June 9, an official communication, conceding Lord Elgin's general terms in essentially the same form as they had been presented, would be ready for transmittal to Lord Elgin.¹¹²

The fundamental reason for the Commissioners' vacillation, however, was not disclosed to any of the foreigners at Tientsin and it was some time after all the treaties had been signed and the missions had withdrawn from Tientsin that the full story became known to them. The fundamental reason was that as a result of the sponsorship of one of the Court factions, the Emperor agreed to recall from enforced retirement, the aged and enfeebled Ch'i-ying to act as chief Imperial Commissioner to take precedence over Kuei-liang and Hua-sha-na.¹¹³ Ch'i-ying had been one of the principal negotiators during the 1842-1844 treaties and

112. "E/B" No. 129 op.cit. Enclosure. Lay's report.

113. "IWSM" [S] HF. 24: 1,6. This was an "additional" edict (though not specified as such by Swisher. p.476) to Grand Secretariat of June 2, 1858. Cf. also edict to Grand Council of June 3, which defines Ch'i-ying's terms of reference. HF 24: 9b,3 - 10,2. (Swisher pp. 476-77).

had made a favourable impression upon most foreigners during the period of his direct intercourse with them. This, in part, had led to his fall from favour when the Hsien-feng Emperor succeeded to the throne in 1850.

By June 5, at the latest, Kuei-liang and Hua-sha-na knew of Ch'i-ying's appointment and that he was en route to Tientsin.¹¹⁴ While informing the envoys of his imminent arrival, however, the Commissioners did not inform them of his appointment.¹¹⁵ When Ch'i-ying reached Tientsin, on June 8, he assumed the guise of a disinterested venerable statesman concerned to spread goodwill and to persuade the envoys that the Emperor's benevolence would be more bountiful if the missions were to withdraw from Tientsin.¹¹⁶

114. "IWSM" [S] HF 24: 21,4 - 21b, 6. Further memorial Kuei-liang, et.al. Recorded June 6, 1858.

115. For reasons why Kuei-liang and Hua-sha-na decided not to inform the plenipotentiaries, see previous citation. The first official notice the British received was a verbal statement made at the meeting of June 11. Vide postez p.218.* On the first communication addressed by Ch'i-ying to Elgin on June 9, Wade specifically called Elgin's attention to fact that Ch'i-ying did not assume title of Imperial Commissioner. "E/B" No. 126. Elgin to Malmesbury, June 12, 1858. (4 Enclosures) Enclosure 1. * *cf. pp. 222-23.*

116. "E/B" No. 126. Op.cit. Enclosure 3. June 9. Memo of Wade and Lay on their visit with Ch'i-ying. Lord Elgin's initial reaction, like that of the other envoys, was favourable to the news. "E/B" ms. Elgin to Lady Elgin. June 9 "Keying.... who is supposed to be friendly to the barbarians has been restored to his rank and has come down here - this is proof that there is at Peking a sincere desire to settle matters pacifically."

Ch'i-ying's true status was at no time revealed to the envoys and it was only in the aftermath of the crisis, just prior to his ignominious retirement from Tientsin, that Ch'i-ying notified Lord Elgin that he had a status at least equal to that of the other Commissioners.¹¹⁷

Ch'i-ying's arrival and the Commissioner's assertion that their official seal had not yet been received, diverted Lay on June 9 from pressing for the promised communication. He and Wade were also occupied in ceremonial interviews with Ch'i-ying and, in view of his non-official guise, side-tracking his efforts to have a personal meeting with Lord Elgin.¹¹⁸

From June 9, though, the suspicion grew in British quarters, at least, that Ch'i-ying's function was to impede and delay the negotiations.¹¹⁹ Lay professed to believe that Kuei-liang and Hua-sha-na were trying to show

117. "E/B" No. 126. Op.cit. Enclosure 4. June 11, 1858. Ch'i-ying to Elgin. See also "E/B" No. 130. Elgin to Malmesbury, June 14, 1858. Enclosure 1, Commissioners to Elgin, June 11, 1858. This and one other communication of the same date (which does not appear to have been forwarded to the Foreign Office) are the only ones which include Ch'i-ying's name - in last position - as one of the Commissioners. None of Elgin's communications to the Commissioners included Ch'i-ying's name in the address.

118. "E/B" No. 126. op.cit. Enclosure 3. June 9. Also "E/B" No. 133. Elgin to Malmesbury June 18, 1858. In the latter despatch, Elgin made it clear he was determined not to meet with Ch'i-ying. The memo in the former despatch recounts how Ch'i-ying mistook H.N. Lay for his father, G.T. Lay, whom Ch'i-ying had met during the events of 1842-43. Ch'i-ying's sight was failing and it is true that the Chinese homonyms for father and son were similar, "Li T'ai-kuo", but their "ming-tzu's" were different.

119. "E/B" No. 124. op.cit. Lay's reports covering interviews of June 9 and June 10. Also Bruce day-book. Entry for June 10, "Atribuye esta hesitacion à Kiyng y al influjo y consijos de les Russo [sic]."

that they were resentful of, and were being intimidated by, Ch'i-ying's presence.¹²⁰ Lay also claimed that, following Ch'i-ying's arrival, he became conscious of signs of popular hostility to himself and of the development of a generally menacing attitude among the natives, who had until then been docile and cooperative toward all foreigners.¹²¹ This pattern was strikingly similar to the behaviour of the Cantonese populace (during, as well as after, Ch'i-ying's sojourn there) whose demonstrations of hostility, it was known, had been fomented with official connivance. Finally, among a large quantity of official documents which had been seized from Yeh Ming-ch'en's yamen when that worthy was captured, were found copies of Ch'i-ying's memorials which elucidated for the Tao-kuang Emperor Ch'i-ying's use of dissimulation in his relations with the "barbarians".¹²²

120. Oliphant op.cit. I, 355.

121. Oliphant, op.cit. I, 377. "E/B" Bruce day-book. Entry July 3 [Translated]. "For the most part the occurrence of popular disturbances was coincident with Ch'i-ying's arrival and disappeared with his departure." Lay, "Opium", pp. 12-13, cites the incident, but in writing 35 years later, he confuses the sequence of events.

122. "E/B" No. 26. Elgin to Clarendon. Feb. 4, 1858. Enclosed a copy of the memorial that was subsequently to be used to intimidate Ch'i-ying. In No. 60 Elgin to Clarendon, March 18, 1858, was enclosed a memo of Wade's, summarising the content of the documents seized. At this point it is again relevant to note that Elgin's attitude was being strongly conditioned quite some time before Lay joined the party.

Thus, in his first visit to the Commissioners' compound on June 10, Lay indirectly warned the Commissioners that serious consequences would follow unless the natives' hostile actions immediately ceased and he demanded that the promised communication be delivered to him the same day.¹²³ On the latter point, the Commissioners demurred on the ground that they had not yet received the proper official seal. This objection was nullified by the British concession that this would not be required on this preliminary document. The officials were finally forced to agree to have the communication ready by mid-afternoon. When Lay returned, despite his giving clear indications of his impatience, he was detained for several hours. When a communication was finally presented to him early in the evening, it turned out to be but a simple formal request for delay and Lay refused to accept it.¹²⁴

At this juncture, Lay became the "uncontrollably fierce barbarian" in earnest. Having lost complete control of his temper (which he con-

123. "E/B" No. 129 op.cit. Enclosure 6.

124. "E/B" No. 134. Elgin to Malmesbury, June 18. Enclosure 1. Copy of Imperial Commissioners and [sic] Ch'i-ying to Reed. June 11. According to Elgin (Enclosure 3) Lay had been proffered "a paper in which several material changes had been introduced." It was this that provoked his anger. Cf. also "Journal of the North China Branch of the Royal Asiatic Society". (JNCBRAS) Vol. XLII (Shanghai, 1911) "The Journal of S. Wells Williams" edited by F.W. Williams, p.81.

fessed to Lord Elgin),¹²⁵ he castigated the Commissioners and using insolent and violent language, he threatened them with immediate resumption of hostilities, with Peking as the objective.¹²⁶ He then stormed out of the compound, passing Count Putiatine, who had an appointment with the Commissioners and who had, while waiting in the corridors, overheard some of the sound and fury emanating from the inner chambers.

The Ch'ing officials were momentarily panic-stricken for they interpreted Lay's remarks to mean that an attack would be launched immediately against Tientsin. Receiving assurances from Count Putiatine that he considered Lay's behaviour shocking and that he knew positively that the British were in no position to launch any kind of immediate offensive,¹²⁷ the Commissioners set afoot a two-pronged diplomatic counter-offensive.

125. In the official British accounts, though Putiatine's testimony was widely circulated, Lay's behaviour was made to appear more deliberate. In the draft of Elgin's communication to the Commissioners following the incident (vide annexa n. 130), one passage with deletions in brackets reads "Mr. Lay, as he has reported to the U.S. [expressed in strong terms his indignation at the manner in which he had been trifled with, and he] warned the [Impl.] Comm^{rs} in emphatic terms." That he reported his behaviour correctly is attested by the entry in Bruce's day-book ("E/B" June 10) "[Lay] habla fuertamente a ellos [sobre?] la su a mala fe."

126. "E/B" No. 127 op.cit. Enclosure 6.

127. "JNCBRAS" XLII. Williams. p.59 [Some of the dates indicated in the edited text are inaccurate].

They reported to the Russian and American Envoys their consternation at Lay's behaviour and requested that these Envoys address Baron Gros and Lord Elgin on the subject.¹²⁸ They complained directly to Lord Elgin about reports reaching them of acts of robbery and violence being committed against the natives by British forces.¹²⁹

It would be difficult to conceive of Lord Elgin condoning Lay's loss of self-control. He was in no mood to receive reprimands, however, from either Reed, the only one of the other envoys lacking in savoir faire, or the Commissioners. Consequently, he authorised a letter to be drawn up for delivery to the Commissioners on June 11, in which he justified Lay's impatience, confirmed the substance of his threats to them, and demanded that the promised communication be placed in the hands of the bearer of his letter (only Wade was specified by name).¹³⁰ He also addressed a scathing rebuke to Reed, first bluntly reminding him that the matter was none of his business, and then noting that

in consideration of the interest w^h you must necessarily feel in the progress of a negotiation of w^h as you have informed me you propose under the most favored nation clause to claim the advantage for y^r countrymen, I have carefully enquired into the language held by Mr. Lay....

128. "IWSM" HF 25: 16b, 5-17b, 4. Memorial of three Commissioners. Recorded June 14. This request has been documented in all the standard studies based on official records of the four Powers.

129. Loc.cit. and "E/B" Communication. Three Commissioners to Elgin. June 11, 1858. (Wade's translation). As far as it has been possible to determine, the only copy of this communication is that in the Elgin Archives.

130. "E/B" No. 134. op.cit. Enclosure 3. Elgin to Kuei-liang and Hua-sha-na only. June 16, (English draft prepared by Wade).

I find that the language was entirely conformable to the instructions wh he had received from me for his guidance. I have therefore thought it proper to direct Mr. Wade to wait on the Imp. Commissioners & to acquaint them that for the language in question they must hold me & not Mr. Lay responsible.¹³¹

Lord Elgin also approved a tactic which, it was hoped, would force the retirement of Ch'i-ying from the negotiating team. When Wade accompanied (unofficially?) by Lay went to transmit Lord Elgin's letter, he carried a copy of one of Ch'i-ying's most compromising memorials. Finding him, as anticipated, present with the other Commissioners at the interview, he produced the memorial and, after the contents were read, turned it over to Kuei-liang and Hua-sha-na.¹³²

131. "E/B" No. 134. op.cit. Enclosure 2. Elgin to Reed. June 11.

132. There are a number of conflicting reports as to who presented and as to who read Ch'i-ying's memorial. In a long printed memo ("E/B") - circulated in Shanghai after the débacle of June, 1859 - "signed" "T.F.W." the writer (Wade?) was non committal. According to Kuei-liang, Hua-sha-na and Ch'i-ying, Wade produced the memorial and it was presented for the Commissioners to read it themselves. "IWSM" (S) HF 25: 18b,6-19b,7: Memorial of the first two Commissioners, Recorded June 14. Also, HF 25: 22b,5-24,5: Enclosing copy of letter from Ch'i-ying to Seng-ko-lin-ch'in in memorial of indictment of Ch'i-ying. Recorded June 15. For this period, at least, Swisher's translations should be carefully checked: e.g., compare virtually identical sections of Chinese text of HF 26: 1b,7-3b,6 (Swisher, 498-500); 3b,7-4b,3 (500-501); 5,10-6b,6 (502-503). Swisher's translations not only vary in phraseology, but there are radical variations in the meaning he has derived from the identical textual material. Hsu op.cit. p.41 (p.227, n.105) remarks that the official record; viz: Oliphant, I, 359, Morse, "Conflict", 521, and BPP [2571] 334 ascribing the memorial to 1850 was "probably owing to a misunderstanding of Wade's introductory note...." is borne out by the printed memo just cited. In this "T.F. W[ade]" writes "[the Commissioner's terror] was increased by the production of a memorial drawn up by Kiying in 1845....."

According to a later report, "the old intrigant was from that moment set aside, returned to Peking, was tried, it is hard to say for what offence, and was condemned to suicide."¹³³ By ten in the evening, the communication, which had been the cause of the crisis, was in the hands of the British.¹³⁴

This recourse to extensive detail to reconstruct the atmosphere and sequence of events during this first crisis has been necessitated to correct an interpretative error propagated by the earliest editors of Lord Elgin's private letters to Lady Elgin.

Since 1872, a version of an extract from Lord Elgin's entry of June 12, has been quoted by every defender of Lord Elgin and, appositely, by every Anglophobe, anti-imperialist and Lay-detractor, as evidence of Lord Elgin's revulsion at the behaviour of his negotiators - the principal one to that date being Lay. The printed extract is reproduced here in its entirety. An extended extract, transcribed from the original manuscript, is, because of its length, reproduced in an appendix.¹³⁵

I have gone through a good deal since we parted. Certainly I have seen more to disgust me with my fellow-countrymen than I saw during the whole course of my previous life, since I have found them in the East among

133. "T.F.W." Memo [July, 1859] p.12

134. "E/B" No. 130. Elgin to Malmesbury. June 14, 1858. Enclosure I.

135. Vide Appendix III.

populations too timid to resist and too ignorant to complain. I have an instinct in me which loves righteousness and hates iniquity, and all this keeps me in a perpetual boil.¹³⁶

In the first place, T. Walrond, the editor of the public edition deserves only mild censure. He was not a specialist in Chinese affairs. Nonetheless, he chose to use for his text, though he was in possession of the manuscript, an edition, privately printed in 1864,¹³⁷ compiled by Lady Elgin and Lord Elgin's last private secretary. This earlier version, without editorial comment, had the advantage of being depersonalised. Later writers, without careful reference to the day to day events, related the distorted extract of Lord Elgin's remark to the crisis of June 10.

In the second place, recognised scholars who have produced studies on the period have either (a) failed to examine the day-to-day developments with minute attention to chronology, or (b) ascribed the evidence of the public record to a manifestation of chauvinism on Lord Elgin's part, or (c) avoided the obvious inconsistency by disassociating their general account of the developments from their specific evaluation of

136. Walrond, op.cit. pp. 252-253.

137. "Extracts from the Letters of James Earl of Elgin, etc. etc. to Mary Louisa Countess of Elgin 1847-1862". (Privately printed. Edinburgh, 1864) 266 p. A copy of this book was being offered by a second-hand dealer in Great Britain in 1962.

Lay's role during the crisis.¹³⁸

In the third place, there were specific incidents, completely unrelated to the negotiation crisis, which were responsible for provoking the emotional outburst recorded in Lord Elgin's letter-journal. The complaints of the Commissioners to Lord Elgin concerning the activities of a contingent of British troops were valid.¹³⁹ Yet it was also true that British officers in Tientsin were being molested by the inhabitants. On June 11, the day preceding the entry in the letter-journal, Capts. Dew and Saumarez complained of being "hooted and fretted"¹⁴⁰ and, in addition, the former was relieved of his cap and dog.¹⁴¹ However, a punitive expedition requested by Lord Elgin, organised with Lay as interpreter, exceeded the bounds of discretion in humiliating the 'Chinese'.¹⁴²

138. The implications of the extract in Walrond rankled Lay at least for 20 years. In his "Note on the Opium Question" (1893) p.12, he wrote, "It must have been about this stage that Lord Elgin made the entry in his diary.....He was then getting his treaty too easily, and could afford to indulge in the luxury of sentiment."

139. Vide antea n.129. See also Elgin's remarks contrasting the behaviour of the forces in 1860 with that of 1858. Walrond, p. 335, July 14. Walrond has omitted a sentence. After "There seems to be really no plundering or bullying", Elgin had written "It shews how much depends on the Chiefs in such matters." ("E/B". ms. July 14.)

140. Adm. 50/281. Report from Adm. Seymour to Admiralty. June 12, 1858.

141. Oliphant, op.cit. I, 378.

142. Adm. 50/281. op.cit. June 12. Oliphant, op.cit. I, 381.

Thus, while Lord Elgin could be remorseful about the "fighting and bullying" and the "almost brutal" behaviour to which he was a party in the negotiations,¹⁴³ his revulsion - expressed on other occasions as well as on June 12 - was a reaction against the generally domineering, arrogant and contemptuous attitudes of his "fellow creatures."¹⁴⁴

The remaining two crises at Tientsin were of a different kind. During June 24-26, after having given the impression that they would concede everything, the Commissioners tried by every means to avoid having to sign a treaty that included the resident minister clause. Every device, such as appeals to the other envoys and efforts to find a Chinese (among others, a member of the American staff) who would act as their interpreter, was ineffectual.¹⁴⁵ Despite these numerous attempts to frustrate the British, Lay maintained his equilibrium and using his knowledge of Chinese customs, with the cooperation of Bruce, he was enabled to convince the Commissioners, only a few hours before the hour

143. "E/B" ms. Elgin to Lady Elgin. June 29, 1858. (Cf. Walrond, op.cit. pp. 253-54).

144. Vide Appendix III.

145. "JNCBRAS", Williams, "op.cit" XLII, pp. 73-74. "E/B" No. 137 and No. 142. Elgin to Malmesbury (with enclosures) July 3 and July 5. "E/B" Bruce day-book, entries for June 24 and 25. The day-book also includes a day to day record of meetings with the commissioners following the June 11 crisis. Lay attended every meeting, but on each occasion was accompanied by either Wade or Bruce.

scheduled for the formal signing, that they had no alternative but to capitulate.¹⁴⁶

The final crisis was a minor one which occurred during the ceremonial signing on the afternoon of June 26. Lay observed that the Commissioners neglected to affix their seals to the separate article covering the indemnity provisions of the treaty. Following a brief exchange with the Commissioners, they affixed their seals to this section.¹⁴⁷

Lay's activities during the negotiations at Shanghai as distinct from those at Tientsin elicited nothing but official commendation. This was perhaps partly due to the fact that the formal negotiations dealt with less sensitive issues and partly to the fact that he could fill the same function for Lord Elgin at Shanghai without the necessity of being attached in any obvious way to the official mission. There was no need to account for his behaviour in any official reports. Probably the most significant factor effecting Lay's behaviour after the conclusion of negotiations at Tientsin, however, was Lord Elgin's wish (recorded only in private) that Lay should become an influential official within the

146. King, op.cit. p.50. The first time the details appeared in print was as an addendum to Lay's obituary notice in the London "Daily Chronicle", May 7, 1898.

147. "Times". Sept. 13, 1858, by a correspondent from Tientsin, June 26.

Ch'ing administration. He expressed his general concern to Lady Elgin, "Even now I have no doubt that the whole Treaty may be made a failure if incompetent people are appointed to carry it out."¹⁴⁸ If Lord Elgin's concern was to be set at rest, Lay had to behave in such a way as to assure that the Imperial government would consider his appointment desirable as well as expedient.

To the extent that Lay's role was conditioned by, and was reflected in, the pursuit of essentially British interests, its enigmatic character was obscured. It was thus possible for those who utilised his services - his two masters - to rationalise his behaviour and to exaggerate his functions. This makes it even more difficult to define precisely the extent of Lay's influence during this phase of his career. As the preceding account indicates, the more intensively the events, issues and personalities are examined, the more it appears that Lay's influence was very limited. He was still, in 1858, a subordinate official, albeit an almost indispensable one, to both his masters.

While this evaluation, thus far removed from the actual events, might be accepted as the valid one, it remains nonetheless true that Lay was a focus of attention at the time. He became one of the best-known foreigners in the Empire - though some high officials believed him

148. "E/B" ms. Elgin to Lady Elgin. Sept. 23, 1858.

to be a Chinese.¹⁴⁹ He could hardly have become better known among the foreigners on the China coast, but his frequent citation in despatches, both of officials and of correspondents, led to his name and his deeds being widely publicised in Great Britain. Thus, he was on the threshold of both fame and fortune when he returned to Shanghai from the Yangtze trip on January 1, 1859. But his position as servant of two masters was dependent on a rationalisation that had yet to be tested fully. The next series of tests commenced shortly after his return.

149. For example, see "IWSM" HF 26: 12b,1-13,5. A further memorial from Prince Kung. Recorded June 23, 1858. The entire memorial is a castigation of Lay's behaviour, recommending that he either be summarily decapitated or sent to the capitol for punishment. See also, the translation of a recently authenticated memorial (vide, Banno, op.cit. p. 67 and p. 271, n.61) referring to the negotiations of 1858 which appeared in NCH No. 469, July 23, 1859, pp. 202-203. The memorialist, like Prince Kung, described Lay as a native of Kuangtung ("Kia-ying Chau"). The NCH gives the author as "Yin Yan-yung". The correct name, per Banno, is Yin Chao-yun. It would be quite possible to mistake the character for "chao" for the character for "yen/yan/". chao- 兆 yen- 延

Chapter VIII

Serving Two Masters - Second Phase: 1859-61

Before continuing with the specific account of the effect of Lay's efforts to fulfill his enigmatic role as a servant to two masters, from the beginning of 1859 until he left Shanghai in April, 1861, on leave of absence, it would be relevant to focus attention on the changing milieu in which Sino-British relations developed after 1858. Some of the changes to be considered - stimulated primarily by developments away from China, e.g., the emergence of Victorian "liberalism", the accelerated pace of industrial and technological development, the Crimean War, among others - had by their impacts helped to generate the 1856-58 phase of the confrontation between China and "the rest". Neither the insignificance of the lorcha "Arrow" and the Abbé de Chapdelaine (the French priest judicially "murdered" in 1856) incidents, nor the dissimulated non-belligerency of the United States and Russia should obscure the fact that aggressive and expansionist forces were pressing on all the surfaces of a seemingly inert mass.

The treaties of 1858, with respect to foreign influence, formalised a partial awareness of changing patterns. The immediate effect of the treaties was, even before the exchanges of ratification (scheduled to take place within a year of signing), a self-propelling cause and effect

implosion. Geographically, it was not just a handful of new treaty ports that were to be opened. It was literally China that was to be opened - given further symbolic significance by the Yangtze trip. It was not just a widening of the crack of formal diplomatic relations that was to be effected. It was Peking (despite Lord Elgin's concession in November, 1858), the political centre of the Empire and of the Imperial structure that was to be the focus of diplomatic intercourse.

The terms of the British treaties, in particular, reawakened in many the dream, made dormant by the post-Nanking frustrations and the "depression" of 1856-58, of unlimited opportunities for economic enterprise. The dreamers in China, it is true, were temporarily overshadowed by those (dreamers, paradoxically, of a different sort) who saw in greater opportunity, greater competition and in greater competition less opportunity for large, short-run profits. In this connection, also, the built-in provisions for the extension of the regulatory administration of trade encouraged the hope of some and the misgivings of others - but for both the augury was for radical change.

Of less direct interest in this study is the subject of religious endeavours. Lay was not officially concerned with the question, though there is evidence to suggest that, privately, he was not unsympathetic to the objectives of some segments of the religionists in the foreign community; the implementation of new opportunities for religious endeavour had a slower potential for being realised and British official

policy was that of relative indifference (if not outright antagonism¹) toward the propagation of Christianity. Nonetheless, though for somewhat different reasons, the religionists contributed to the general atmosphere of anticipatory expansiveness in the foreign community.

In another vein, even if the seemingly inert mass that was the Empire was continuing in its lethargic ways, the tempo of significant activity on the part of foreigners was gaining in velocity. Viewed against the pace of development prior to 1856, the activity of the succeeding two years was at least notable for the energy expended, if not for a lengthy list of tangible achievements. The movements of armed forces and embassies, the "campaigns", the treaties - with Japan as well as with China - the tortuous peregrinations of Imperial entourages and the Yangtze trip itself, agitated the mills of popular interest. The feuds, the vendettas, the personalities were not less numerous, less tempestuous, nor less idiosyncratic than they had been, but in the ex-

1. On the Governmental level it need only be recalled that there is but one Article (Tientsin: VIII) in the Agreements of 1858-60, simply calling for toleration for the practitioners of the Christian religion. The Article (Tientsin: IX) providing for authorisation to British subjects to travel in the interior under passport referred only to those interested in pleasure or trade. On the personal level, Bruce on his return to England being informed of his appointment as Minister to China wrote: "I shall keep clear at present of missionaries, but I hope to be spared to give these fanatics a bit of wholesome advice after I close my connection with that blessed country. My opinions are in favor of converting Christians to Buddhism." ("E/B" Bruce to Lady Augusta Bruce. 22/11/58).

panded and increased activity, new formations began to emerge and personalities began to be submerged.

A more significant change, however, was that related to the manifestations of the altered balance of forces between foreigners on the one side and the Chinese and Manchus on the other. On the corporate level, the mid-19th Century represented a plateau in the progress of nationalistic ferment. The contest to be chief among equals or equal among the chiefs was being pursued with the effect of differentiating the sheep from the goats. The "Arrow War" provided conclusive evidence to the powers associated with it of the complete vulnerability, militarily, of the Chinese Empire. The awareness of this condition, apart from increasing the wariness of the Powers toward each other, fostered the acquisitive propensities of those involved and further prepared the ground for the extension of fields of special interest.

On the individual level, there was also a change in the behaviour patterns of foreigners. There had long been an under-current of resentment against the pretensions of the élite of the Celestial Empire and most foreigners, at mid-century, were convinced of their own superiority even if they were too fearful, on the whole, to put it to the test beyond the limits of treaty right, business discretion and gunboats. The backwash of the victories of 1857-58 - before the moderating effect of the débacle at the Taku forts in June, 1859 - supplemented by a much larger number of gunboats, released most of the inhibitions of the foreigners. They began to flaunt openly their superiority, to indulge in untrammelled ridicule

and to magnify the volume of their bellicosity.

That the vast majority of Chinese and Manchus were unaffected by what seemed so obvious to foreigners (the Japanese might well be included) is not so extraordinary. The quantitative scope of the physical threat was relatively inconsequential except in the extreme northeast where the object of Russian policy was patently to appropriate large expanses of sparsely populated Manchu territory. The casualties of 18 months of hostile confrontation, which in total included barely a fortnight of armed engagements, were numbered in the low thousands. Only two miniscule areas - Canton and Taku - suffered appreciable destruction and moderately intensive occupations. Against the quantitative threat of the various native rebellions, the minor, temporary successes of the foreign "rebellions" were not sufficient to upset the equanimity of the élite's ethno-centric self-esteem.

A handful of Imperial officials, (mainly those in continuous contact with concentrations of foreigners over extended periods) who grasped the significance of the moves of the occidentals and who sensed the proverbial "hand-writing on the wall", were unable, as well as reluctant, to communicate their insight to the myopic eyes and the plugged ears of the Court. In the event, the fact that perceptive officials could grasp and sense the changes set in motion achieved little more than to mislead well-meaning foreigners (e.g. Lay) into the belief that the need for adaptation would be rapidly recognised by a large segment of the élite.

The final aspect of the changing environment that warrants consideration concerns the character of the foreign community. The numbers of those described as permanent, male adult residents, "China Hands" as it were, remained exceedingly small. At the beginning of 1859, the total for all nationalities at Shanghai was still just barely 400², and for the whole China seaboard (excluding Macao), it was still under 2,200.³ But two factors basically altered the atmosphere of the environment.

Firstly, although not identified as permanent elements, the armed forces constituted a continuing augmentation of the foreign community. Concentrations at focal points - Hongkong, Canton and Shanghai - were generally above 2,000. Numbers in themselves, except as members of the other ranks tended to become a source of mercenaries in the internecine struggle, were of less import than the fact that the contingents brought into the communities groups of officers - men often from distinguished families. The normal structure of the social milieu in which, previously, consular and diplomatic personnel had loomed large,

2. Morse, "Conflict". p.346. But Morse's figures are unreliable. It is evident that his figure for 1858 for Hongkong, for example, includes the whole "European" population of men, women and children. Cf. "NCH" 455, 16/4/59. p.146. At the end of 1859, the European population at Shanghai, including women, was 568. Cf. "NCH" 495, 21/1/60. p.11

3. Morse, "Conflict". p.346. Qualified as in preceding note.

was re-oriented for the time being. Secondly, a perceptible change was taking place in the character of the main body of "China Hands". A new generation of career-conscious managers and staff were filling the vacancies caused by decimation or by withdrawal from the ranks, of the old pioneers and adventurers and filling the new openings in the more firmly established old houses, which were increasing in size, in complexity of operations, and in aspirations for respectability. The importance of this change - evident by 1859 - can be inferred from a plea by Frederick Bruce to the Foreign Office at the end of 1860:

But pray choose [supernumeraries] of liberal education and gentle extraction - A Consul requires good manners both to secure his position with his own countrymen, and to get on well with the Chinese. Consuls can't compete in point of living with the merchant princes but the representatives of these latter are generally as deficient in education as they are flush of cash - & they yield willingly to the influence of a man who is a gentleman.⁴

Bruce, of course, was not alluding specifically to H.N. Lay, but to his own consuls. However, Lay, who had been causing Bruce almost as much difficulty as some of his Consuls, was precisely the type of public servant nurtured in China whom Bruce was inveighing against.

The preceding discussion of the changing environment may help in defining a sharper focus for perceiving the nature and evaluating the significance of Lay's activities after the return from the Yangtze trip,

4. FO 17/339. Bruce to F.B. Alston. Private. 31/12/60. (Seen by Russell 29/3/61).

which had lasted almost eight weeks.⁵ The immediate and projected scope of his functions represented an addition to his responsibilities and an enhancement of his status. Yet, the other changes taking place had the effect of making his own relative position less significant and of obscuring the fundamental enigma of his dual role.

A. Serving the Imperial Authorities

In resuming the account of specific developments, the activities of his two major functions, officially administrative servant of the Imperial authorities and unofficially political and diplomatic agent of the British plenipotentiaries, will continue to be differentiated. All that can be noted in defence of this approach is that the principals themselves sought to accomplish this objective as long as it suited their respective purposes. The essence of the enigma was precisely that when the two functions were assumed by (or assigned to) one person, they could not be differentiated.

Since S.F. Wright has treated, definitively and exhaustively, almost all major aspects of the organisation, the administrative structure, the customs policies and regulations, and the delineation of the limits of legal jurisdiction developed during the early years of the infant ser-

5. Oliphant, II. p.466. Mentions six weeks. However, the entourage left Shanghai on November 8, and the Mission suite returned on Jan. 1.

vice under Lay's administration,⁶ this account will be restricted. The account presented here will concentrate on correcting some of Wright's inaccuracies, which have a bearing on interpretation of Lay's administration, and on giving additional data to clarify the motivating forces conditioning his behaviour.

The history of Lay's appointment as Inspector-General can be recorded briefly. Although Rule 10 of the supplementary "Tariff and Rules" negotiated in the Summer and Fall of 1858 employed the deliberately phrased proviso that the "high officer [of the Chinese Government] will be at liberty, of his own choice, and independently of the suggestion or nomination of any British authority, to select any British subject he may see fit to aid him...." in the discharge of functions related to the "Collection of duties under one System at all Ports",⁷ it was certain that Lord Elgin desired the appointment of Lay.⁸ It was just as certain

6. Wright, "Tariff". Chs. II-III. Wright "Hart". Ch. IV-V, VII-VIII. The second work repeats much of the earlier work verbatim. Wright in the later work, however, shows more consideration for the influence of Lay's activities. Morse, "Submission", Chs. I-II, VII, is good for definition of issues, but there are many factual errors.

7. M. Banno, "China and the West" (Cambridge, Mass., 1964). Shows how the Ch'ing Authorities sought to re-interpret the concept of the High Officer mentioned in Rule 10 to circumvent the concession for residency of foreign ministers at Peking. There is no question that in its original framework it was meant to refer to an official who would be charged with seeing that a uniform system for collection of duties was implemented. Some foreigners assumed the "High Officer" would be a Chinese or Manchu, but it seems fairly clear that the envoys in 1858 thought of him in terms of a foreigner or at most a figurehead for a foreign Inspector-General.

8. Vide antea Chapter VII pp. 196-197. Vide ~~postea~~ n. 116.

that on the British side, apart from Wade, the Ch'ing Authorities, as much as they may have valued Lay's positive qualities (knowledge of language and of customs' affairs and his three and one half years' relatively successful management at Shanghai), had no other choice. The United States and French agreements incorporated identical language on this point except for specifying the correspondingly appropriate nationality,⁹ but there were no Americans (apart, possibly, from S. Wells Williams who, though he periodically served the U.S. diplomatic missions, was committed basically to missionary enterprises) or Frenchmen who could be considered remotely eligible.

Thus, within weeks after returning to Shanghai and well before the treaty could formally come into force, Lay was launched on setting up the programme for extending the foreign Inspectorate of the Chinese Imperial Maritime Customs Service.¹⁰ In the absence of an official appointment, it may have been more than simple coincidence that his initiative coincided with two important developments. On the one hand, it is quite probable that Lay was informed by Hsüeh Huan¹¹ (and/or the taotai Wu Hsü) of Ho Kuei-ch'ing's efforts to have an Imperial Commissioner-

9. Wright, "Hart". p.134.

10. FO 228/281. Misc. To and From Bruce, 1860. Documents in case of foreign employée, J.R. Hooper hired Jan. 15, 1859, dismissed July, 1859. Also "NCH" 482, 22/10/59, p.47.

11. In the contemporary documents Hsüeh Huan was almost always referred to as "Sieh". S.F. Wright refers to him as "Hsieh".

ship to deal with foreign (trade) affairs established at Shanghai.¹² Were this to be approved, Ho and Hsueh would have the authority to commence implementation of the rules of trade. On the other hand, the news that Frederick Bruce was appointed as permanent minister, which only reached Shanghai on January 22,¹³ meant that direction of British policy in the implementation of the treaties would be under the control of one who was fairly thoroughly familiar with and completely sympathetic toward the concept of a foreign Inspectorate. It was not long before the quasi-official character of his first acts, still authorised in his capacity as British Inspector at Shanghai and directed at enlarging the customs staff at that port, were accorded broader official sanction. At about the time that an edict announcing the Court's qualified approval of the rules of trade, accompanied by another authorising the transferral from Canton of the office of the Imperial Commissioner for foreign (trade) affairs and its bestowal on Ho, reached the Viceroy's yamen,¹⁴ Taotai Wu - closely allied "politically"

12. Banno, op.cit. p.93 ff. and n.2, pp.286-87. These efforts had begun in November, 1858.

13. Walrond, op.cit. p.307.

14. "IWSM" HF 33: 29b,10-33b,3. Edict to Grand Sec. Recorded Jan. 29, 1859. Swisher, op.cit. pp.551-552, gives translation of an additional Edict to the Grand Council ("IWSM". HF 33: 33,7-34b,1) of the same date outlining the same information.

as well as officially with Ho and Hsueh - wrote to Lay instructing him to hire persons "of character and respectability", with a three-year guarantee of salary, for the customs service.¹⁵

Since Lord Elgin had undertaken at the end of January to visit Hongkong and Canton again, Lay became the courier for the Imperial Commissioners' verbal communications conveying the news contained in the Edicts.¹⁶ It also gave Lay an opportunity to make overtures locally for Customs staff¹⁷ and, on Lord Elgin's decision to return home with most of his mission,¹⁸ to solicit the assistance of some of his aides to recruit additional staff directly from Great Britain.¹⁹

15. Pamphlet. "Letters, etc. from the Imperial Commissioner Ho, and other Chinese Authorities, relating to the Foreign Customs Establishment." (Shanghai, 1860), (Hereinafter cited as: Pamphlet. "Letters, etc."). Wu Hsü to Lay, 19/2/59. (Copy, without three appendices, included in FO 17/339 No. 187. Bruce to Russell, 29/10/60).

16. "E/B" No. 25. Elgin to Malmesbury. 26/2/59. Walrond, op.cit. p.309. In the despatch Elgin referred to a letter having been transmitted through the Consul, D.B. Robertson. In his report to Lady Elgin, he wrote that Lay had brought the letter.

17. "E/B" Wade to Elgin. Private. 14/3/59. Wright "Hart", pp.136-137 dates the commencement of Lay's activities from an appointment in Sept. 1859. It was actually common knowledge that H. Tudor Davies had been appointed by Lay as Shanghai Commissioner in May. Cf. "NCH" No. 459. 14/5/59. Also "LCT" 1/8/59, p. 387.

18. On Elgin's decision to return vide ~~passim~~ pp. 296-297

19. There are many notices that FitzRoy was acting as a recruiter. For Oliphant, cf. "LCE". 24/11/59, p.2.

Lay did not remain long in the south as he had a special despatch to deliver from Lord Elgin to Ho.²⁰ As soon as he got back, he learned that, as he wrote privately to Lord Elgin, "Ho has given me fresh authority to select more officers for the various Customs' establishments, and has in fact formally invested me with 'plenipotentiary powers' in regard to all Customs' arrangements."²¹ Wade, transmitting Lay's letter, elaborated:

I am sanguine that so far as trade goes we shall have little to complain about. Ho, you see, desires the Treasurer, Wang [Yu-ling], and the Judge Sieh, to write to Lay that he is 'much gratified' with the proposition 'to engage good men for employment at the different ports' and says he places the administration of the Customs for the next 5 years entirely in the hands of 'Inspector Le', who accordingly writes to FitzRoy to engage more hands.²²

Lord Elgin, in the meantime, had had second thoughts about Lay's burst of energy. He wrote from Singapore:

As regards your own matters let me urge you to be cautious. If you make yr. system very expensive it will lose a great recommendation both in the eyes of Chinese & foreigners. Depend upon it [sic] is much easier to enlarge than to contract an establishment - I feel too sincere an interest in yr. success to withhold from you my opinion on this point.²³

20. "E/B" No. 28. Elgin to Malmesbury. 7/3/59.

21. "E/B" Lay to Elgin. Private, 25/3/59. This apparently was in reference to Wu Hsü's notice to Lay of 26/2/59. Contained in Pamphlet. "Letters, etc." as Item 2.

22. "E/B" Wade to Elgin. Private, 30/3/59.

23. "E/B" Elgin to Lay. Private, 13/3/59.

Lay, having been further stimulated by Ho's directives just prior to receiving Lord Elgin's letter, acknowledged it, but was completely silent "as regards [his] own matters."²⁴

There is no evidence that accounts satisfactorily for the nature and timing of the next step in the process of formalising Lay's position as executive administrator of the Customs service. This step was marked by an "order", issued on May 23, 1859,²⁵ by Ho directly to Lay appointing him Chief Commissioner (or, as Lay rendered it, according to occidental usage: Inspector-General)²⁶ of Customs for all treaty ports. It included the earlier provision for a tenure of five years and assigned Lay "the task of establishing at all treaty ports a Custom House on the Shanghai model." This was followed two days later - indication, perhaps, of the alacrity with which Lay responded to the formal appointment - by an agreement which, in addition to stipulating conditions customary in public service appointments, provided for a

24. "E/B" Lay to Elgin. Private, 4/4/59.

25. "FL" Ho to Lay. May 23, 1859. (In Chinese) Lay's copy has noted on cover "Rec'd May 24, 1859". The "official" translation in Pamphlet. "Letters, etc". bears the legend that it was translated by T.F. Wade and certified a true copy by J.A.T. Meadows. This point has some significance because Wade did not arrive in Shanghai, being in Bruce's suite, until June 6. If it were just a matter of getting a translation, Meadows could have provided just as satisfactory a one as Wade.

26. Wright, "Hart", p.136 and Morse, "Submission", p.33.

considerable increase in salary.²⁷

Mounting pressures for the introduction of an Inspectorate system at Canton²⁸ may, in part, account for the nature and timing of Ho's formal appointment of Lay. The former's jurisdiction, as Imperial Commissioner, included Canton. Lay was still only British Inspector at Shanghai, the earlier authorisation to him to extend his activities having been notified by provincial officials. At the same time, it may be recalled that a suggestion was made during the preceding summer that Lay might be susceptible to bribery.²⁹ In this respect, developments in the diplomatic sphere were approaching a crisis in May, 1859. Since the other reasons which may account for Ho's action are related to these developments, they will be dealt with in a later portion of this chapter.

27. "FL" Lay received an "i-tan" on May 25, 1859, but the writer carelessly failed to translate it or make a copy. In H.N. Lay, "The Foreign Office and Our Policy in China" (n.p., Feb. 1868). Supplement containing correspondence referred to in the pamphlet (n.p., nd) (Hereinafter cited as Lay, "F.O." and Lay, "F.O.Sup."). P.18. There is a reprint of Lay's letter to the "Morning Post" 22/1/68 in which he refers to his loss of an £8,000 salary. Also, Lay's termination settlement in 1864 would confirm this figure. Cf. Wright, "Hart", p.250. However, his 1859 salary as I-G was 12,000 tls. (£4,000). Cf. p.450.

28. Wright, "Hart", pp. 137-140. The earliest request made by the Ch'ing officials for Lay's services was in Heng-ch'i to Wu Hsu. 22/5/59 (Cf. Pamphlet, "Letters, etc." Item 4). The request specified a foreign inspector to oversee the opium revenue!

29. "IWSM" HF 25: 32b,9 - 33b,5. Temp. Jr. Vice-President of the Bd. of Rev. Sung-Ch'in Memorial. Recorded 17/6/58. This was included in an Edict of the same date to Hua-sha-na and Kuei-liang.

No public notice appears to have been given of Lay's new appointment. There were, after all, some singular aspects to the situation. Firstly, while consistent with the intention of Rule 10, the new treaties were not yet in force. Secondly, Ho's action, in the event, represented a unilateral setting-aside of the multilateral agreement of June, 1854, which had established the Shanghai foreign board of inspectors, without any consultation with any of the representatives of the other parties who had participated in that agreement. This seriously exercised the French Consul and the French Vice-Consul. The latter, in particular, who had since early 1858, held the position of French Inspector concurrently with his consular post, was incensed,³⁰ for Lay's appointment led to the prompt termination of the appointments of the two other Shanghai Inspectors with three months' severance pay in lieu of notice.³¹ The French Consul was the only one to raise objections of an official character,³² but these were ignored by both his own and the Ch'ing Authorities.

30. The intensity of Edan's resentment can be measured by its duration as indicated in "E/B" Bruce to Elgin. Private. 6/3/60. "In spite of my entreaties Lay has not managed the susceptibilities of the French in the C. House establishment & I think they will give us trouble about it. Edan [Consul, by this time] resents having been turned out - & protects French smugglers in every way."

31. J. Fredet, "Quand La Chine s'ouvrait..." (Shanghai, 1943) pp.302-303. Wright, "Hart", p.136.

32. Fredet, op.cit. p.253.

Except for continuing to recruit new personnel,³³ Lay did not undertake to expand his activities until late September. In the first instance, he was precluded from doing so until the treaties actively came into force. The Ch'ing Authorities were free to do as they wished, but foreigners were not obliged to adhere to the treaties until they were ratified. The failure to effect the exchange of ratifications, as a result of the repulse at the Taku ports, further delayed implementation of the new Customs provisions.³⁴ Lastly, before news of the exchange of the ratification of the U.S. treaty reached Shanghai, Lay was physically incapacitated for about a month.³⁵

The renewal of a state of limited non-intercourse between Britain and France and the Empire, occasioned by the Taku affair, continued until the Court was forced to capitulate as a result of the second Allied expedition of July - October, 1860. However, as commercial relations were not proscribed by either side and as ratifications of the U.S. treaty had been exchanged, the legal basis for the opening of some new ports and

33. Among those recruited in this period was Robert Hart. Having declined to accept a position directly from the Ch'ing officials at Canton in May, 1859, he negotiated with Lay. ((J. Bredon, "Sir Robert Hart" (London, 1909) pp. 51-52.)) With the authorisation of Bruce, he resigned from the Consular Service as from June 30, 1859.

34. The need for retrenchment was specified by Lay when J.R. Hooper was given notice. For documentation, cf. antea n.10. Lay to Hooper. 20/7/59.

35. The incident is described in greater detail, and documented, below. Vide pp. 302-303 and n. 150-153.

the imposition of some new dues, was established. Bruce went so far (and further, a year later), when Lay returned to action in September, 1859, as to circularise the consular officials enjoining them to cooperate in the introduction of the new system.³⁶ Most of the following five months was devoted to opening Inspectorates at Canton and Swatow.

Under the circumstances, Lay's official status, nonetheless, remained unchanged throughout the balance of 1859 and the early part of 1860. For a brief period in the summer of 1860, however, after the second expedition was getting under way, he "withdrew, for the time being, from all connection with the Chinese Customs..."³⁷ and he "advised other British subjects in the Service to follow his example."³⁸ Lay professedly took this action in response to an Order in Council, gazetted in mischievous terms by the Shanghai Consul, T.T. Meadows,³⁹ who was as inflexibly opposed to the Inspectorate idea as ever,⁴⁰ and

36. FO 17/314. No. 48 Bruce to Russell. 21/11/59. Enclosure. Bruce to Consulates. 28/9/59. Out of deference to the British and French, the U.S. Envoy, J.E. Ward, excluded from implementation those provisions of the U.S. Treaty not initially negotiated by the U.S.; e.g. new tariff schedule, etc. Also, an Edict closing trade to "aggressors" was issued as a desperate measure in Sept. 1860. Cf. "BPP" "Correspondence Respecting Affairs in China 1859-60" [2754] LXVI, pp. 207-08.

37. Morse, "Submission", p.33, n.29, quotes Lay to F. Wilzer. 18/8/60.

38. Wright, "Hart", p.147.

39. "NCH" No. 519. 7/7/60, p.106. Consular notification dated 7/7/60.

40. "E/B" Bruce to Elgin. Private. 22/10/59. "[Meadows] can't understand your not having adopted his free trade views. He is very jealous of the influence Lay, etc. will gain over the Chinese authorities - the very thing which makes the system desirable, sets ambitious Consuls against it."

in the face of warnings from senior British law officers in Hongkong.⁴¹ That Lay became conscience-stricken at a time when he was badly in need of a holiday and when it coincided with an opportunity to get married,⁴² should also not be overlooked, especially as a month after his wedding, he acceded to Bruce's "official letter requiring him & his Custom house to go on....", hostilities notwithstanding,⁴³ and resumed his functions on September 20.⁴⁴

Despite an endless succession of problems and obstacles, Lay's achievements as Inspector-General, coupled with recommendations from Wade and Bruce,⁴⁵ commended themselves to the Ch'ing Authorities who were familiar with his work. Soon after the exercise of authority at Peking was restored to a normal routine, steps were taken to "soothe the barbarians" by institutionalising the new order of Sino-foreign relations.⁴⁶

41. "E/B". Bruce to Elgin. Private. 17 & 18/9/60.

42. Lay left Shanghai on July 13, the first quick passage after Meadows' notification of July 7. He "withdrew" on Aug. 18 (Cf. antea n.37), was married Aug. 21 (Cf. "The Overland Register" [Hongkong] 25/8/60, p.133) and returned to Shanghai on Sept. 17 (Cf. "NCH" No. 530, 22/9/60, p.150). Lay may have arranged his journey, of course, to enable him to consult the legal officers at Hongkong on the applicability of Meadows' notification.

43. "E/B". Bruce to Elgin. Private. 17 & 18/9/60.

44. Morse, "Submission", p.33, n.29, quotes Lay to Wilzer. 20/9/60.

45. FO 17/350 No. 14. Bruce to Russell. 12/3/61. Enclos. Wade to Bruce, 11/1/61, and Bruce to Wade. 17/1/61.

46. Vide ante, Appendix IV.

As part of this process, upon the recommendation of the officials who had worked closely with Lay, an Imperially sanctioned appointment, issued under the seal of Prince Kung (the Hsien-feng Emperor's brother who had been delegated to manage relations with the treaty powers) confirmed Lay as Inspector-General, using much the same terminology as Ho's commission of May 23, 1859.⁴⁷

Lay received his copy of the appointment on March 2, 1861.⁴⁸ An English translation was published in the "North China Herald" a week later.⁴⁹ This is additional evidence, if any were required, to support Wright's contention that H. Cordier mistranslated the German of the report of Count Eulenburg, Prussian envoy in China, who was seeking to arrange diplomatic intercourse for his country, which led Cordier to assert that

47. "IWSM" i) 71: 32b,6-34,3. Hsueh Huan. Memorial. Recorded 16/1/61. ii) 34,4-34b,1. Edict, same date instructing Kung to act. iii) HF 72: 16b,5-17b,2. Prince Kung and others (including Heng-ch'i, ex-Hoppo of Canton, who worked closely with Lay in the latter part of 1860), Supplementary memorial. Recorded. 24/1/61, enclosing the basic text of the Commission forwarded to Lay on Jan. 21, 1861. Kung, in the memorial, acknowledged the memorialists' indebtedness to Ho's text.

48. Wright, "Hart", p.151, probably based his assertion that Lay received the notice in February on the fact that advices from Tientsin usually reached Shanghai in two to three weeks. However, Lay's correspondence came through the overland Ch'ing service. On this occasion, transmission spanned the Chinese New Year and thus accounts for the fact that Lay's copy ["FL", ms.] has the notation: "Received 2nd March 1861".

49. "NCH" No. 554, p.39. 9/3/61.

Lay had divulged an intention to decline the appointment.⁵⁰ Lay did not decline; it is doubtful that he even considered it as an offer, but rather simply as the confirmation of Ho's action when he was Imperial Commissioner.⁵¹

By early March, however, Lay had decided upon taking a leave of absence,⁵² disregarding an "invitation" from Prince Kung, conveyed in a private letter from Heng-ch'i, to visit Peking for consultations.⁵³ Lay observed the formalities of making a request for his leave, but embarked from Shanghai well before an official reply could conceivably

50. Cf. Wright, "Hart", p.158, n.119, for French and German texts and for full citations of sources.

51. Hsueh Huan's memorial, cited above (n.47), contains the suggestion that it was Lay who solicited the request that his commission should receive formal confirmation directly from the Court.

52. Bruce, in Tientsin, was aware of his decision by March 15. Vide postea, n.53.

53. H.N. Lay, "Our Interests in China" (London, 1864) (Hereinafter cited as Lay, "Interests.") pp. 6-7. It is generally alleged that the invitation was for Peking. Assuming it was Lay who notified the editor of the "NCH" upon receipt of the private letter, that led to the public announcement of March 9, (vide antea, n.49), this was what was understood by Lay. None of the official Ch'ing documents that this writer has seen, however, specifically states "Peking". They refer specifically to Tientsin, or generally "to the north" or "up here", with a Tientsin dateline. The significance of the point is that it is another indication that, based on British interpretations of Lay's importance, the British anticipated Ch'ing intentions. That these anticipations were not soundly based was borne out by the experience of R. Hart who, instructed by Lay to proceed to Peking in his stead, was expected by the Ch'ing officials to proceed no farther than Tientsin. Cf. Wright, "Hart", pp. 198-199.

reach him.⁵⁴ In refusing to postpone his leave until he had made at least one visit to the North, he discounted blandishments of a most serious nature sent to him by Bruce.⁵⁵

In carrying out the various activities related to his role as an official during this period, Lay's administration was marked by considerable achievement and by the crystallisation of a broad range of unresolved issues. Lay's identification, in this connection, with official British interests (real and imagined) incontrovertibly had its impact on the character of the new Inspectorate. His objectives, in promoting Imperial interests (according, of course, to occidental standards), had a corresponding impact on conditioning the limits of British interests, both official and private. It is within these terms that the achievements and the unresolved issues are to be considered.

The achievements of Lay's administration can be made to fit into four categories: staffing, structure, operations, extension. From his earliest assumption of independent responsibility, Lay sought to recruit men of calibre, whose integrity in seeking to avoid conflicts of interest - political or pecuniary - could be relied upon. There was a limitation to the degree of immediate success he could achieve. There were numerous

54. Prince Kung acknowledged, and provisionally granted, Lay's request under date of April 7, 1861. Cf. Lay, "Interests", p.5. Lay and his wife left Shanghai on April 7. Cf. "NCH" No. 559, 13/4/61, p.58.

55. Lay, "Interests", p.8.

openings: when the new treaties of 1858 were fully implemented, as many as fifteen ports might be "opened". The supply of suitable candidates in China to meet the prospective need was scarce. In consequence, he gave his first attention to acquiring the best qualified candidates for administrative ("indoor") posts, taking less care - at the outset - in selecting those for ("outdoor") posts requiring less responsibility.

One major source, for the type of men he was looking for, was H.B.M.'s Establishment in China. Lay could not draw heavily here, since the Establishment had also to expand, but had to confine himself to recruiting from the middle and junior ranks of the different services (diplomatic, colonial, consular). As the U.S. and French establishments of career public servants were little more than nominal, for practical purposes these did not provide any source of qualified candidates. For political reasons, Lay ultimately found it expedient to appoint some men from these services, men of unquestioned probity, but lacking almost every other qualification.⁵⁶

With but one or two possible exceptions, Lay did not draw any

56. Vide ~~postea~~, p.257 and n.67-68, and p.267

recruits from the mercantile community for the "indoor" posts.⁵⁷

The salary scales for foreigners were moderately higher - for comparable ranks - than the scales in the British Service, but they were still relatively low for qualified men in private employ. The obvious susceptibility to criticism to which men drawn from private employment would be subject, may also have acted as an inhibiting factor in recruitment from this source.

For his main source, as has been noted, Lay had inaugurated a programme of recruitment of men from Britain. As it turned out, the programme itself proved premature. Just as the new recruits (most of whom were young and some of whom were married) were beginning to arrive, the repulse at Taku occurred. This necessitated some retrenchment and created the problem of caring for those for whom, in the event, no positions were available. In the uncertain interim, while provision was made by Lay for a "Guarantee Fund" to meet claims which any of the recruits might

57. G.B. Glover who was taken on from the outset as Deputy Commissioner at Canton was an American, recently arrived from the U.S. and who had business training. FO 17/315 No. 58 Bruce to Russell, 6/12/59. Enclosure (extract) Wade to Bruce. 6/12/59, reporting from private letter from Lay. Also cf. FO 228/267 No. 41. Winchester to Bruce. 22/10/59 and No. 50. Same to same 25/11/59. Actually Jardine's was negotiating to employ a "Glover" whom they believed had turned down an Inspectorate appointment. ("JMA" II.A.2. (37), J. Whittall to Hongkong. 16/7/59 - No. 1272 and 1/8/59 - No. 1280). One of the recruits for the Canton office was a "C.S. Matheson" who, conceivably, had some connection with a member of the mercantile firm.

make should it become impossible to fulfill his contract,⁵⁸ these people were left adrift as a responsibility on the community.⁵⁹ As no charges were ever made against the fund, it can be assumed that all eventually found gainful employment in the Inspectorate or other local enterprises, or returned to Britain.

The significance of this pattern is that Lay conceded that the Inspectorate should reflect a "European" profile.⁶⁰ But, despite the constant urgings of Bruce, who understood that if the system were to have any chance of survival it would need the active cooperation of the Americans and French, and that, therefore, the foreign staff should not be overwhelmingly British,⁶¹ Lay seemed incapable of voluntarily drawing on other than British sources. No attempt appears to have been made to recruit new staff from countries other than Britain. Lay only accepted the principle of senior appointments on a nationality quota basis when the issue was forcefully raised by the American Envoy, John E. Ward, in discussions with Ho, and when Ward pressed his views directly upon Lay.⁶²

58. "CMC". Vol.I, pp. 235-240. Circular No. 27 of 1870 (First Series) (Extract). Explanations regarding Guarantee Fund from Robert Hart. 31/12/70.

59. "LCT" P.98. 30/1/60 (From a Shanghai correspondent).

60. "JNCBRAS" XLII. Williams, p.220.

61. Wright, "Hart", p.143.

62. "JNCBRAS" XLII. Williams, p.220.

Lay's policy created difficulties, but it also had its salutary results. The irritation engendered by the extension of the system elicited a constant barrage of bitter complaint and criticism, but the latter was almost always tempered by the qualifications that the senior (British) staff were honest, conscientious and, at least, basically impartial and that some tolerance should be shown in the face of the youthfulness (sometimes alluded to as a back-handed compliment, as Lay himself was still under thirty) and inexperience of these officials.

One aspect of Lay's recruitment policy has a bearing on the definition of his personality. By 1860, three of his four younger brothers (G.T., W.H., and W.T.) were in China. The eldest of these three had come out with Lay in 1847, and was in China again in 1860, after a visit to England.⁶³ Lay had been responsible for getting the second brother, after his journey to China in 1852, an appointment as supernumerary.⁶⁴ The third reached China in 1859,⁶⁵ and after his

63. Of the existence of this brother there is not the slightest question. i) There is a letter in the possession of Mr. John L. Lay of Pickering, Ontario, addressed by "Angelina" (H.N. Lay's only sister) to "My dear Brother George" from London 26/2/57. ii) The "NCH" traced the movements of G.T. Lay from Southampton until his ultimate arrival at Shanghai. ("NCH" No. 518, p.102, 30/6/60).

64. For the early account of W.H. Lay, vide antea, Chapter IV, pp. 71-72.

65. "NCH" No. 493, 7/1/60. p.2 W.T. Lay arrived at Hongkong on 29/12/59.

arrival, he was accepted, following Lay's sponsorship, by Bruce as a supernumerary - on the condition that he would not defect to the Inspectorate! In fact, Lay did not recruit any of his brothers into the Inspectorate, although the last arrival of the three, W.T., did, with Bruce's acquiescence, accept an Inspectorate post when Lay was on home leave in 1862.⁶⁶

The implication, perhaps intended, was that if Lay was not willing to use his influence on his brothers' behalf, he was unwilling to compromise the position of the Inspector-General for private reasons. Further substance is given to the implication by the fact that when he was involuntarily forced to appoint personnel who were less qualified than he desired, one was the brother of U.S. Minister Ward,⁶⁷ and the other was the cousin of Secretary of the French Legation, Count Kleczkowski.⁶⁸

Lay's achievements in organising an effective structure can be dealt with expeditiously. The Shanghai "model", with modifications, introduced after the elimination of the Board of Inspectors (May, 1859),

66. FO 228/320. Miscellaneous to Bruce. W.T. Lay to Bruce 5/6/62. FO 17/351. No. 36. Bruce to Russell 23/4/61. 17/375 No. 170 Bruce to Russell. 22/11/62. Vide also App. VI E. (May 26, 1862).

67. Wright, "Hart", p.144. W.W. Ward was appointed commissioner at Shanghai.

68. Lay, "Interests", p.5 Kung to Lay. 7/4/61.

in its "indoor" structure resembled the British consular pattern. The distinctive aspect, if such it may be called, was that all the positions of responsibility were assigned to foreign personnel. The jurisdiction technically exercised by Ch'ing Authorities was through channels separated from the Inspectorate. The parallel structures, in the Chinese tradition, provided a convenient instrumentality for circumventing unpleasant situations. Whichever organ was under pressure, in a given instance, could shift responsibility to its counterpart. During the formative period, before lines of authority had been fully defined, with reference to both the inter- and intra-governmental patterns, the arrangement was an advantage to the new service, since it enabled Lay and the other foreign officials to shunt aside direct attacks. It also had the disadvantage that there was the appearance - and the reality - of conflicting policy and inefficient direction.

Much of what effectiveness was achieved through structural organisation, as recently implied, was contingent on the qualifications of the staff. Inefficiency could be excused in the face of integrity, but the defects of the "outdoor" structure combined deficiencies in facilities with deficiencies in the character of the personnel required to carry out the essential functions of the service. Measured in terms of the expansion of trade (which should be differentiated into increased trade at Shanghai, revival of trade at Canton and legitimisation of a longstanding smuggling trade at Swatow) and the expansion of the structure,

the degree to which functions were effectively carried out was commendable. Nonetheless, incidents involving clashes between traders and service personnel occurred regularly. When violence was a feature of the clash, Chinese were usually the victims. As often as not the merits of a case were subordinated to the charge that the staff was saturated with rabble.

The lack of adequate wharves, of established inspection stations, and of public warehouses for storage and bonding made the tasks of surveillance and inspection that much more difficult. In addition, the topographic and hydrographic features of the regions in which the ports were located along with the precedents which had developed in conjunction with special anchorages for opium-receiving vessels, contributed to the difficulties of organising effective arrangements for the control of trading and shipping. Lay's achievement in this sector of structural organisation was rather in the direction of gaining the cooperation of the diplomatic officers of the Treaty Powers to control their own nationals than in the direction of solving problems of customs administration.

The problems of enforcement and of policing measures were not only aggravated by the personnel factor and the lack of adequate facilities, but also by the complexities of the diplomatic/military position. Activities designed to develop an effective policing service could be, and usually were, construed either as a cover-up for the Ch'ing Authorities to acquire material for the prosecution of the war or as

placing within reach of those authorities facilities which would be used for this latter purpose.⁶⁹ Lay had plans in 1856, and again in 1859, to commence the building up of such a service, but on each occasion the plans had to be shelved and reliance placed on token facilities. In this situation, as in the one just previously cited, Lay had to fall back on the pressures that could be exerted through the diplomatic envoys.

The evaluation of Lay's achievements in the third category, "operations", must be more equivocal than in the two that have preceded. If "operations" be defined to include the formulation of policies and of rules and regulations, the effective implementation of workable political and administrative relationships with different interest groups - public and private - and the realisation of the "larger" objectives envisaged by the proponents of the system, Lay's specific contributions - constructive and obstructive - are diffused in the complex of the issues and in the effects of the activities of the many other principal contributors.

Basic policy was embodied in the treaty settlements to which Lay admittedly contributed. But his unique contribution was essentially a mechanical one - classification of commodities exchanged in the export/

69. Merchants, individually so as not to impugn the "respectability" of firms, had no compunction about selling arms and equipment to any who wished to purchase them. When it was put to use, the buyers and not the sellers were contemned.

import trade and determination of values for computing specific duties. The articles on commerce in the main treaty and the rules of trade in the supplementary treaty were the products of the accumulated experience of diplomats, administrators and merchants. On occasions when the initial responsibility for formulating administrative regulations fell to Lay; i.e., at Shanghai in 1855 and 1859, at Canton in 1859, and for the opening of the Yangtze trade in 1861, many of the provisions could not be implemented because they were either unreasonable or impractical. His ineptness, when he relied exclusively on his own resources, not only aroused the antipathy of the mercantile community, which had to submit until adjustments were ungraciously introduced, but it also, in the Yangtze situation, provoked Lord Elgin to outbursts of despair: "He brought me yesterday a set of rules for the Yanktze [sic] trade after a week of preparation, and it really was a very sorry production."⁷⁰ And, "....I must say neither in [the indemnity] nor in the Yanktze matter do I find Lay very fertile in expedients."⁷¹

Insofar as workable relationships were concerned, Lay was successful, at least until his departure, in maintaining partisan personal support for himself and in retaining official support for the Inspectorate. The

70. "E/B" Elgin to Bruce. Private. (Journal-letter, since mails to Tientsin were still unscheduled. 7-11/12/60.) [December 11]

71. "Ibid" 15-19/12/60 [December 15]

support, however, was generated as a consequence of the unsatisfied interests of the supporters rather than as a consequence of any measurable achievements due exclusively to Lay. It should not be necessary to detail the reasons for the unceasing opposition and antagonism of the merchant communities. The imposition of more rigid and more extensive controls, unreasonableness and inefficiency aside, while conceded in principle to be desirable as a means of preventing cut-throat competition for extra-legal favours,⁷² could not help but be a chronic irritant to those who unabashedly had but one object - unrestricted profit.⁷³ Their sense of oppression was so strong that there were some, after the Taku affair, who wishfully anticipated a renegotiation of the treaties which would discard the Inspectorate idea and which might even sanction "free trade".⁷⁴

Another factor fostering irreconcilable conflict between Lay, along with most of those he selected to serve with him, and the merchants was that, particularly after the 1858 treaties were settled, the former were intent on defending the rights of the Chinese whilst the latter were as

72. "NCH" No. 493 Supplement n.p. 7/1/60 Cf. Also "E/B". Elgin to Bruce. Private. Dec. 21, 1860 to Jan. 3, 1861. Reporting conversation with Whittall [Jan. 3] Same to same. 9/1/60. [sic, should be 1861]. Reporting conversation with Sir Hercules Robinson, Governor of Hongkong.

73. Michie, op.cit. II. Ch. XIII.

74. "JMA" II.A.2 (37) Whittall to Hongkong. 15/4/59 (1228)

insistent that the government should, as a precondition of cooperation, fulfill its obligations. Lay in his enigmatic position, along with the Inspectorate structure - officially instruments of the Empire, but dependent for their continuance on the quasi-formal sanction of the foreign plenipotentiaries - were easy targets for merchants' disaffection. The merchants were never so patriotic as when trade was threatened or slack. Between 1859-61, conditions of trade in season and out of season, were at best almost always uncertain.

On this last point, Lay may have developed a personal grudge against Jardine's. He was an unfortunate victim of maladministration of funds by a Chinese Shroff for another firm (Moncreiff, Grove & Co.) for whom Jardine's acted as administrator in liquidation proceedings. Lay had deposited a substantial quantity of silver bars (value of Tls. 14,500 c. £5,000) "for safety not bearing interest" with the firm.⁷⁵ Jardine's, after careful investigation and with legal advice, decided that none of the remaining assets included any portion of Lay's deposit⁷⁶ and he was required to execute a Deed of Release.⁷⁷

75. Loc.cit. Underscoring in ms.

76. "Ibid". 26/5/59 (1235).

77. "Ibid". Mar. 1, 1860 (with P.S. of Mar.3) (1402). On 6 March, Whittall wrote that recovery would be impossible (1412). Actually until July, 1859, Lay and Whittall were still on fairly good terms. Cf. "JMA" II.A.5(2)(23) Whittall to Joseph Jardine. March, 1859 & II.A.2 (37) Whittall to Hongkong, July 1859. In December, 1860, Lay complained that Jardine's "gives him a great deal of trouble at present..." "E/B" Elgin to Bruce. Private. 21/12/60 - 3/1/61. [Dec. 21].

The reasons for Lay's record of "success" in effecting worthwhile relationships between the Inspectorate and public authorities - with one vitally important exception - are as obvious as the reasons for his poor record with the merchants. The exception is represented by distinguishing between senior officials and their subordinates. The distinction applies to both Ch'ing and foreign officials.

At the senior levels, among the Ch'ing, the considerations dictating the support of Lay and the Inspectorate were fiscal, administrative and political. The experience at Shanghai from 1854-1858, which was more widely publicised during the latter part of the period, offered fairly conclusive evidence that a larger share of customs revenue could be channelled into the coffers of the higher authorities if collection were administered by a foreign Inspectorate. Whatever may have been its short-comings in the eyes of foreign elements, the arrangement provided the most effective means yet devised for bringing the foreign merchants, at any rate, under control. It was, in view of the advantages, the least odious of the concessions that had to be granted to "soothe the barbarians." To the extent that an official of any given rank could be convinced that the function of the Inspectorate would not jeopardise the traditional prerogatives of his office, he was prepared to tolerate Lay's officiousness and the limited operations of the Inspectorate's minor evils.

In this respect, Lay benefitted briefly from the fact that the early stages of the Inspectorate's institutional growth were usually ill-defined. But wherever (as at Swatow from the start) or as soon as (as at Shanghai

and Canton in late 1860) the fundamental character of the institution manifested itself, - a centralised agency directly responsible to and literally accountable to Imperial authority at Peking - successively higher ranks of officials grew antagonistic and obstructive. Thus, at Swatow, which in any case in the first instance was subject - in the traditional manner - to the Governor-General's fiat, the inception of the foreign Inspectorate aroused the hostility of the whole body of officialdom in that community.⁷⁸ Hsueh Huan, at Shanghai, whose offices by 1860 included that of Imperial Commissioner for the southern ports, governor of Kiangsu and acting Governor-General of Liang Kiang, and who had been one of the most consistent supporters of the new system, started to become hostile and obstructive as control of Lay and the Inspectorate's operations gravitated toward Peking.⁷⁹ Heng-ch'i, as Hoppo at Canton having early appreciated the personal advantages which would accrue from a systematic collection of customs revenues, had co-operated in the establishment of the Inspectorate at that Port.⁸⁰ When, however, Heng-ch'i was posted to Peking, he sought to obstruct the con-

78. "LCT" 17/3/60 p.171; 27/4/60 p.243; 28/5/60 p.290.

79. "E/B" Elgin to Bruce. Private. 7-11/12/60.

80. Local opposition of subordinate officials became so vociferous, however, that Heng-ch'i tried to exculpate himself from the accusation of having volunteered his cooperation. Cf. FO 228/267. No. 39 Winchester to Bruce. 17/10/59.

solidation of the Inspectorate's operations under the control of the highest ranking Imperial officials.⁸¹

It would be misleading to conclude that it was entirely personal interest that motivated the attitudes of individual Ch'ing officials. In fact, the more the Inspectorate was fashioned into a foreign-style administrative institution, reflecting the modest progress achieved under Lay's direction, the more the basic incompatibility between it and Confucian-style institutions was crystallised. In the formative period here being considered, virtually every achievement was offset by the addition of new problems.

When analysing the development of relationships between Lay and foreign officials, in conjunction with Inspectorate operations, a modification in the distinction between senior and sub-ordinate levels should be taken into account. The diplomatic branch was, per se, the senior level of the civil establishment. It was unnecessary for Lay to cultivate the support of the British diplomatists on behalf of the Inspectorate idea. Once they had familiarised themselves with conditions at the Treaty Ports, Lord Elgin and Frederick Bruce were not only as strenuous as Sir J. Bowring had been in supporting the idea, but they also elaborated the conception of the Inspectorate's functions

81. Wright, "Hart", pp. 198-199. Cf. antea n.53.

to the extent that they viewed it as a cornerstone of Sino-foreign relations. As the problems and difficulties of the extension of the system multiplied and accumulated, and these problems were ever more frequently directed to the authority of the envoys for solution, Lord Elgin, if not Bruce, flagged in his faith in Lay and in the system:

[Dec. 7] Lay is rather in a bad way overwhelmed by the difficulties of the task he has undertaken [sic].

[Dec. 11 Apropos efforts to work out arrangements on the indemnity question]....but Lay was here yesterday and raised so many difficulties that I almost despair of finding a solution. I confess I am getting very low about the whole affair. With you bottled up at the North Pole, and [T.T.] Meadows here to make mischief the prospect is as bad as possible....[the indemnity, the Chinese officials' hostility, the merchants' opposition and] - then you have the French and American officials who require to be bribed into toleration of the system by fat places being made for useless retainers. These difficulties are enormous and I do not think Lay is the man to cope with them.⁸²

I confess I am not very sanguine as to the possibility of the system being made to work.⁸³

Removed by distance and time from the immediate pressures, Lord Elgin's sanguinity was only slightly restored:

82. "E/B" Elgin to Bruce. Private. 7-11/12/60.

83. "Ibid". 21/12/60 - 3/1/61. [Dec. 21.]

As regards the Customs House and Rebel questions I hold much the same view you do though perhaps not quite so absolutely - I am impressed by the enormous difficulties of maintaining a system which has everybody [including "our own govt because it dislikes trouble"] against it..... Practically, I am desirous to support it, and therefore I have taken care to point out how essential its maintenance is to the payment of our indemnities.....⁸⁴

Bruce, who had the continuing responsibility for resolving outstanding issues, was firmer in his support:

Perhaps the most important step taken, is the nomination of Mr. Lay.....as Inspector General....., and the recognition of the Imperial Government of the Foreign Customs Establishment. [If the objectives of the Inspectorate idea are to be realised] It will require considerable tact on his part, and a loyal support from the agent of Her Majesty's Government to enable him to render all the services to China, his position will admit of his conferring, for it will excite the jealousy of other, even friendly foreign Powers.....my experience in the Levant and China shows me, that national vanity and petty jealousy determine the actions of foreign Ministers, far more than sonorous abstractions of civilisation and progress.....I hope her Majesty's Government understands therefore that this question has now a political as well as a pecuniary aspect, and that your Lordship will not hesitate in authorising me, to support the Establishment, against the clamours of those interested in smuggling, and in spite of the anomalies and difficulties which surround any attempts to define the powers of the Chinese

84. "Ibid". 28/2/61 (From Galle). Bruce had appealed for Elgin's uncompromising support in a private letter from Tientsin, 29/12/60. (Copies of a few of Bruce's private letters to Elgin are in Foreign Office files. This one may be located in 228/281).

Custom-house though I do not despair of finding a satisfactory solution for them.⁸⁵

Doubtless the motives ascribed to the French and American officials by Elgin and Bruce were, in part, justified; more so if the reference were to the subordinate officials. Because of the small amount of the French trade, however, the primary interest of the French was in terms of the Inspectorate's revenue for indemnity payments rather than in its administrative direction or operation. Except for the assertion of the right of national representation on the foreign staff, M. de Bourboulon, the French Minister, consistently followed the lead of the British envoys in commercial matters.⁸⁶ None of the records investigated thus far contain the slightest suggestion that he harboured any ill-feeling towards Lay or that he was a party to the obstructive activities of his Shanghai Consul, B. Edan.

The situation with respect to the American envoys was somewhat different. Apart from the mutually aggressive antagonisms that were a regular feature of the relationship between Lay and the influential body of American merchants (who usually acted in combination with disaffected Britons), successive envoys were predisposed to be suspicious

85. "Ibid". Bruce to Russell. Private. 5/2/61. Tientsin. (Several of Bruce's private letters to Russell, 1860-64, can be found in the Public Record Office under classifications FO 17/ and 30/22/49,50. This last classification is a more recent designation for the collection cited by Costin as "G.D. 22/49".

86. FO 17/314 No. 48. Bruce to Russell. 21/11/59.

of English behaviour. The particular attitude of John E. Ward is relevant to the present discussion. Summing up his experience after a confrontation with Lay, he reported:

that coming to China with strong anti-English prejudices, it was natural that I should sometimes have imagined that an effort existed to thwart our views, and a reluctance to concede to us that to which we were justly entitled. Investigation and experience have alone been required to remove all such erroneous impressions on my part.⁸⁷

Ward was also in a delicate position since the prestige of the Americans had suffered because of the conditions under which the exchange of ratifications of their treaty had taken place. As much of the criticism originated among the British, when a head-on clash between Lay and the U.S. Consul at Canton materialised with the introduction of the foreign Inspectorate, Bruce was fearful that Ward would be compelled to "come down four-square" on the side of his compatriots.⁸⁸

87. "E/B". Ward to Bruce. Private. 5/12/59. (Also cf. FO 17/315. Unnumbered despatch. Bruce to Russell. Secret and confidential. 19/12/59). This passage, in quoted text and paraphrase, appears in a multiplicity of forms in numerous despatches. The U.S. Secy. of State transmitted it to the FO, which sent it on to Bruce. Ward had already quoted it to Bruce in a private letter and Bruce sent it along to the FO. The text here differs from the "original" (Ward to Secy. of State cass, No. 23. 10/12/59. Cf. passim n.94) only in that the grammar has been polished. The discrepancy in dates is unexplained, since in the private letter of 5 December, Ward specifically stated that he was quoting from his "despatch to my own Government....."

88. FO 17/315. No. 49. Bruce to Russell. Confidential 22/11/59.

However, Lay was alerted to the fact that Ward was on his way to investigate the conflict and he was all but instructed by Bruce, privately through Wade, to do everything possible to placate Ward.⁸⁹ Lay's success was attested to in the most positive manner by Ward in a private letter to Bruce (which included the above-quoted extract from an official despatch to the U.S. Secretary of State):

I am happy to inform you that I was met by Mr. Lay in the spirit which you foretold, and all difficulties have been satisfactorily adjusted.

....were it possible for me to remain in China, it would be a source of great pleasure and satisfaction to me to co-operate with you to the full extent of my power, in carrying out your policy, which, as expressed to me is as judicious and humane to China as it is wise to other Governments.⁹⁰

In defence of Ward, against the general charge of the French and Americans being subject to bribery, and of Lay against the possible charge that he was a mere tool of the British envoy, the following report from Wade to Bruce should suffice:

To remove all jealousy, Lay has appointed Mr. Glover, an American, the Commissioner at Canton⁹¹ Mr. Ward pressed for Mr. Hunter [?], but Lay demurred to appointing

89. FO 17/314. No. 48. Bruce to Russell. 21/11/59.

90. "E/B" Ward to Bruce. Private. 5/12/59 (Vide antea n.87)

91. G.B. Glover had originally been assigned as acting Commissioner, pending the arrival of FitzRoy, who was to have been Commissioner. (Cf. Wright "Hart", p.143). Instead FitzRoy was slated for Foochow, but actually went on to Shanghai where, late in 1860, he relieved H. Tudor Davies, who had applied for sick leave.

any Minister's nominee and Mr. Ward gave way admitting that he had no rights to interfere and that the selection of the person to be employed must rest entirely with Mr. Lay.⁹²

In his own defence, especially after his brother received the appointment as Commissioner at Swatow, Ward officially recorded that he had "recommended no individual American Citizen for any appointment nor have I used any influence to secure the appointment of any one..."⁹³ but he had secured the commitment that one-third of the Commissionerships should be held by Americans.⁹⁴

Further evidence of the extent to which American officials, acting in a diplomatic capacity, were prepared to support the Inspectorate system was indicated by the action of the Chargé d'affaires, after Ward's departure, Flag Officer C.K. Stribling. Ward had taken the position that the new tariff and rules, though an integral part of the American treaty, were derivations from Articles in the English and French Tientsin treaties and, therefore, could not become operative until the latter

92. FO 17/315. No. 58. Bruce to Russell. 6/12/59, quoting Wade to Bruce, same date, underscored as in original. As Wade's information presumably came directly from Lay, the evidence should be accepted with reserve.

93. "CMC" VII, p.41 (Extract: quoted from "Records of the U.S. Dept. of State, Despatches, China," Vol. XIX. No. 6. 26 March 1860. Ward to Secretary of State).

94. "Ibid". pp. 35-36. (Quoted from "Records....." as in n.93. Vol. XVIII. No. 23. 10 Dec. 1859. Ward to Secretary of State).

treaties entered into force.⁹⁵ Possibly through an oversight, Ward failed to proclaim the new tariff and rules in force before his departure from Hongkong in Mid-December, 1860, although Elgin's official proclamation (Tientsin, Nov. 20) of the coming into force of the whole treaty settlement was gazetted in Hongkong on December 11.⁹⁶

American merchants sought to take advantage of Ward's failure to act by claiming they could not be bound by the new treaty and rules.⁹⁷ Stribling, however, apparently acting on his own initiative, notified U.S. nationals that Ward's intent had been clear. Despite the absence of an authorised U.S. version of the new tariff and rules, they were to be considered in force, with the English Treaty text serving as the official version, ad interim.⁹⁸ If there was any British initiative

95. "NCH" No. 545, 5/1/61 p.2. Letter of C.K. Stribling from Hongkong 25/12/60, printed under notice of U.S. Consul Smith.

96. Printed Document. Issued by Colonial Secretary's office, Hongkong. Government Notification No. 139. It is possible that this notification was not distributed until after Ward left. However, "NCH" No. 541 8/12/60 p.194, carries a reprint of Elgin's proclamation of Nov. 20 from an "Extra" dated Dec. 6. A regular mail steamer left Shanghai on Dec. 7 (Cf. Supplement to "NCH" No. 541, n.p.) and since the trip to Hongkong rarely exceeded three and one half days (i.e. GN 139 is dated 11/12/60), Ward very probably had knowledge of Elgin's proclamation.

97. "E/B". Elgin to Bruce. Private. 21/12/60 - 3/1/61. [Dec. 27].

98. Vide antea, n.95.

stimulating Stribling's action, it does not appear to have originated with the British envoys.⁹⁹

Uniformity and conformity in the attitudes of the envoys had been achieved relatively quickly and easily. By being willing to seek workable relationships with the envoys, Lay had facilitated their co-operation in finding bonds of common interest in relation to the Inspectorate - each preserving the opportunity to rationalise his support in terms of "sonorous abstraction." By contrast, the Consular officials for personal, professional and practical reasons were disinclined to be as indulgent towards the Inspectorate and Lay, who for essentially the same reasons was unwilling to bend to what he considered the whims and fancies of Consular officials.

Commencing with the expansion at Shanghai, the operational problems that had first emerged when the Inspectorate was initiated at that port were re-activated and were followed by the crystallisation of identical problems at each successive port to which the Inspectorate was introduced. The pattern varied only to the extent that a particular Consul was more or less aggressive or that personal factors injected an emotional charge into the resultant clashes.

The operational problems were almost all rooted in the fundamental question of the respective jurisdictions of the Consuls and the foreign

99. Vide antea, n.97. As indicated, the first notice of the complaint was registered Dec. 27. Lay left Shanghai on December 23 and could not, therefore, have been on hand when Stribling wrote his letter of December 25.

officers of the Inspectorate, complicated by the corollary question as to whether the latter were accountable for their acts officially as part of the Imperial apparatus (behind which they usually had to retreat when hard-pressed) or individually as nationals.¹⁰⁰ Such specific issues as the right of Consuls to be consulted in the formulation of regulations, to be in direct communication with the native officials of the customs establishment and to have absolute judicial authority over the behaviour of their nationals (whether as merchants, functionaries, etc.) derived from the basic question. Wade and Lay had established the questionable precedents of arbitrarily formulating operational regulations, of precipitously promulgating them and of autocratically administering them. These techniques were continued by Lay and his appointees, with a few independent contributions by native Ch'ing officials, acting on their own initiative, thrown in. Consuls, in the day to day business of their offices, found their authority, as it had come to be exercised in China, being ceaselessly encroached upon.

Sufficient notice has been taken of the attitude of the French Consul at Shanghai to obviate the need for further elaboration of his position in the present context. The British Consul, D.B. Robertson, who had been bullied into submission on the Inspectorate issue by Sir

100. Vide antea Ch. VI

John Bowring in the contretemps of 1855-56, was succeeded by T.T. Meadows, as acting Consul, in July, 1859.¹⁰¹ The record of Meadows' feelings towards Lay and his views on the Inspectorate, as well as his disagreement with British policy in general, has already been cited. He left nothing undone in his efforts to assert the full authority of his office. Neither reversals of his decisions by Bruce in Inspectorate cases, nor reprimands, abated his struggle to preserve what he sincerely believed to be the prerogatives of the Consul. His effectiveness in opposition to Inspectorate operations, disruptive as it was, was hampered because of the extremeness of his views. Thus, Bruce, somewhat consoled, could write:

It is not safe in the present [rebel] crisis to leave him here, and even those, who, like Webb [senior in Dent, Beale & Co.], supported him in the Custom house quarrel, do not hesitate to express themselves in this sense.¹⁰²

Meadows, however, could not be quickly moved by either Bruce or Elgin. He had been posted to the new "Siberia" of the China Service, New Chwang (Meadows, himself, did not think of this post in this way), but the opening of the port had to be delayed until the Spring thaw of 1861. Lay left on his leave before Meadows was relieved at Shanghai.¹⁰³

101. "NCH" No. 469 23/7/59, p.202.

102. "E/B". Bruce to Elgin. Private. 31/8/60 (FO 228/281).

103. Meadows was succeeded by W.H. Medhurst, Jr., who was as militant in the defence of Consuls' rights as his predecessor.

Although similar issues arose at Canton and Swatow, the same sort of crisis did not materialise in the relationships between Lay and the local British officials. Firstly, at Canton, Lay apparently made the effort to accord some recognition to the acting British Consul, C.A. Winchester¹⁰⁴ and went so far as to consult with him during the early phases of the introduction of the new system.¹⁰⁵ Secondly at Swatow, the office of the Inspectorate was set up before that of the Consulate.¹⁰⁶ Because of this, the initial test cases, representing the clash of interests, passed to the Courts at Hongkong,¹⁰⁷ with the result that judgments were handed down that were usually detrimental to the Inspectorate.¹⁰⁸ Thirdly, the temper and views of Winchester and

104. FO 228/266. No. 6. Winchester to Bruce. 11/5/59. Winchester took over from Alcock until Robertson arrived at the end of July (vide antea, n.101). No. 28. Robertson to Bruce. 3/9/59. Robertson advised Bruce that he was taking home leave, upon which Winchester again became Acting Consul.

105. FO 228/267. No.38, 12/10/59 and No. 43, 7/11/59. Winchester to Bruce.

106. Lay, having been authorised by Gov.-Gen'l. Lao to extend the Inspectorate to Swatow (Pamphlet, "Letters, etc." Item 9. Lao to Lay, 17/12/59), proceeded there directly from Canton about mid-January, 1860. (Cf. "LCT" 17/3/60, p.171). The British Consular Office was not established at the time. (Cf. "LCT" 12/5/60, p.267)

107. "LCT" 26/3/60, pp.194-95. Quoting Hongkong "Daily Press".

108. "LCT" 12/5/60, p.267, and 6/6/60. p.315. Also "E/B" Elgin to Bruce. Private. 9/1/60. [Sic. S/B '61]. "I asked Sir H[ercules Robinson] yesterday what had been the result of Lay's action - and I was sorry to hear him say that not only has Lay been cast in heavy damages but that the Chief Justice, who was most indignant with the jury in the murder case [wherein an English merchant-vessel captain fired into an Inspectorate boat killing a Chinese], considers the verdict to have been altogether right and Lay's conduct [in seizing a ship's papers as security for payment of duties] quite unjustifiable." Incidentally, this and other evidence refutes Wright, "Hart", p.144, that "The establishing of a Customs House at Swatow presented no difficulties.....".

of G.W. Caine, who was first Consul at Swatow, were moderate and were amenable to the authority of the envoys. Both these men professed to be favourably disposed to the idea of the Inspectorate, though they also felt that they were entitled to more than was being conceded to them.¹⁰⁹ Fourthly, it appeared that if one Consul, regardless of nationality, assumed the mantle of aggressive protector or challenger, the others were quite prepared to remain on the sidelines. Thus, at Shanghai, the American Consul, despite the attitude of the American merchant group, was not involved in any altercation, of record, with Inspectorate officials. On the other hand, at Canton, where the American Consul, O.H. Perry, briefly played the role of a Meadows, the British officer did not engage in public controversy.

Finally, by mid-1860, Bruce's patience appeared to be at the end of its tether. The mildest, and in fact quite constructive, criticism of some of the Inspectorate's operations put forward by Winchester resulted in an exchange of correspondence which drew from the latter this protestation:

I fully appreciate the motives for supporting the customs system. I have throughout given it the frankest support. I am satisfied that without laying myself open to any imputation of disobedience of instructions or even want of cordial support

109. FO. 228/266-267. Despatches from Canton consulate to Bruce, 1859, passim. Also "E/B". Winchester to Bruce. Private. May 4 and May 9, 1860. And FO 228/293. Despatches between Swatow (G.W. Caine) and Bruce, 1860, passim.

of them I might have assumed a lower tone - which would have made the task of the Customs people much less easy here than it has been.¹¹⁰

Where Bruce had to deal with an inexperienced and "junior" career official like Caine, who complained that he was at a loss to know how to fulfill his functions properly, the former was startlingly autocratic in his response:

I have no sympathy with the pedantry that leads Consuls to stand aloof from the members of [the foreign Inspectorate].

I have to instruct you to act in [a co-operative spirit] and I warn you that in any recommendation for promotion to important posts, I shall consider as a necessary qualification that the Consul should have shown tact & a [~~friendly~~] disposition to act harmoniously with the Foreign Inspector.¹¹¹

Backed in this manner, the relative achievements of the Inspectorate officials loom large, for in the long run the brunt of merchant opposition which, if anything, increased, was directed at the cooperating Consuls and

110. "E/B" Winchester to Bruce. Private. 4/5/60. Underscored as in original.

111. FO 228/293. No. 6. Bruce to Caine. 10/9/60. "Friendly" has been deleted in Bruce's draft.

the sympathetic envoys.¹¹²

The openly aggressive and vitriolic hostility of the U.S. Consul at Canton was short-lived. Within several weeks after the contest began, John E. Ward appeared on the scene. He conciliated the disputes by supporting the Inspectorate on most substantive matters and the Consul on procedural arrangements.¹¹³ Operational problems related to the complex conditions of trade at Canton continued to plague all the officials concerned, but conflicts between the establishments were, during subsequent developments, of minor proportions and more subdued.

From a different point of view, one specific aspect of the general problem should be referred to. A common complaint of the Consuls was that the introduction of the foreign Inspectorate interposed an additional major obstacle to the development of direct communications between them-

112. Lord Elgin after his return from Peking in 1860 took up residence in the home of James Whittall, Senior in Jardine's. Elgin's host took advantage of the opportunity to harangue him frequently. "E/B" Elgin to Bruce. Private [Dec. 11] "Whittall spoke to me for an hour yesterday about the confiscations and other grievances." [Dec. 21] "He then indulged in an hour of abuse of the Custom House....." [Dec. 27] "Whittall made another violent assault on me this morning." For Jardine's full-fledged assault on the Canton Consulate and on Bruce, cf. "JMA" Letter-Books (Local) 27 Aug. 1858 - 14 Jan. 1864. Also II.A.2 (34) Item 3. Bruce to Jardine's [A. Perceval] 7/5/61.

113. FO 228/267. No. 64. Winchester to Bruce. 25/12/59. Enclosing copy of Ward to Perry. 12/12/59. (Copy also appears in "CMC" VI, pp. 81-84.)

selves and their native counterparts. Up to a point, Lay was pursuing a deliberate policy that gave substance to the complaint, in accord with an attempt to strengthen the lines of centralised authority, which it was presumed would work to the advantage of both the high Imperial Authorities and the diplomatic envoys. Numerous hypothetical questions may be posed as to whether or not this was beneficial for promoting relations between Chinese and foreign interests. Answers to the questions must be contentious. By the same token, it would be contentious to try to evaluate Lay's position in terms of "achievement".

Within the limited sphere of operations covered by Lay's activities up to the Spring of 1861, working relationships between the Inspectorate and the foreign governmental officials were, at least, placed on a footing of more effective co-ordination. That Lay made some gestures "to act harmoniously" with sub-ordinate ranks had, it may be concluded, some salutary effect. Many of the points at issue were simply de-activated, however, because they were in the process of being resolved by the political and judicial agents of the home governments. In the interim, the fires of ambition and animosity were dampened by the envoys.

The commitment of the envoys to support of the new system was an asset which Lay exploited, but what could not be exploited in the prevailing conditions of 1859-61 was publication of the "larger" objectives which motivated that support. First and last, all objectives were motivated by self-interest: stability, indemnity and prestige. First and last, the "larger" objectives were the result of the rationalisation of British interests at a lofty level. As long as they were kept at that

level, the other envoys had no other recourse but to associate themselves, albeit privately, with them.

The concept of the Inspectorate as an instrument which could be utilised to promote a transformation in obsolete Imperial patterns can be traced in the correspondence of Sir John Bowring. Lord Elgin disdained the man, but accepted the legacy of many of his ideas. In producing "his" treaty, Lord Elgin, ever conscious that fulfilment of its provisions would be dependent on a transformation taking place from within the Imperial structure, authorised the inclusion of articles and rules which could serve as a rationale to foster a transformation. Insofar as he could, he manipulated the activities of those responsible to him in a manner which would encourage their selection for pivotal posts in the pattern he envisaged.

An Inspectorate system¹¹⁴ supported, but in no way controlled, by the cooperation of a (the) major Power(s) could ensure fulfilment of the legitimate obligations and rights of all foreign interests. Constituted as a territory-wide centralised administrative agency, it could be a model

114. The statement of the "larger" objectives as presented here is not to be found in any single document. Its formulation is based on a multiplicity of views and comments scattered through a) memoranda of Bruce submitted to the Foreign Secretary in 1858 b) private letters of Elgin to Lady Elgin and to Bruce c) official despatches and private letters of Bruce to Russell, d) private letters of Bruce to Lady Augusta Bruce and to Elgin, e) Lay's published writings ("Interests" and "F.O." and "F.O. Sup"., and f) despatches of Anson W. Burlingame to U.S. Secretary of State Seward.

for re-organisation in the other branches of government. A highly-principled, dedicated and experienced executive, having access to and having the confidence of at least one faction of the highest officials in the land (through, for example, the provision in Art.V)¹¹⁵ could be expected to exert a most beneficial influence on the cultivation of friendly international relations and on the acceleration of the acceptance of modern occidental standards in political, social and economic activities. By tying the indemnity to a remunerative activity administered by the Inspectorate and by scheduling a programme of extended payments, Lord Elgin hoped to create an interlocking framework of entrenched interests that would assure the support of the principals (the home governments, the foreign merchants and the Court at Peking) for a long enough period of time to enable the Inspectorate to be accepted on its merits. This vision was so "large" that (if it was at all practical) it could materialise irrespective of the powers of endurance of the incumbent dynasty.

This vision of the "larger" objectives did motivate the dedicated energies of those like Bruce and Lay, who had reluctantly assumed the

115. Vide Appendix IV, however

responsibilities of the pivotal posts.¹¹⁶ That the vision existed also goes far to explain the progress that was achieved, as well as some of the failures: failures of impatience and intemperance in the face of the petty motives of small men with small ideas who, by their behaviour, obstructed "progress" and jeopardised the realisation of the vision. And withal, the crusaders were denied the inspiration that comes from drum-beating and bugle-blowing, for crusaders were not in order among the political and pecuniary realities of 1859-61.

Lay's achievements in the final category of operational activity can be easily evaluated in quantitative terms. The system at Shanghai was expanded and elaborated. It was introduced under official auspices

116. "E/B" Bruce to Elgin. Private. 24/11/58, informing him of his appointment as Minister. "My feelings of dislike to the post are as great as ever, but I look upon it as the greatest difficulty & therefore the greatest honor in the profession & if I fail, I have the consolation of feeling that I have never sought it nor represented myself as equal to it." The most specific reference pertaining to Lay is included in a printed, posthumous (1898) "Statement of Mr. Lay's Services", prepared as part of an application for a Civil List pension for his widow. "In 1859, Mr. Lay accepted the post of Inspector-General of Chinese Customs, mainly at the request of Lord Elgin, instead of coming home on his Staff." (FL ms. Enclosure in letter from friends of Lay to A.J. Balfour, First Lord of the Treasury. June, 1898). The earliest intimation of this appears in a letter written by Lay to the "Morning Post" under date of 27/1/68. (Lay, "F.O. Sup" p.18) "At the request of the Chinese Government, and of Lord Elgin, and at the officially expressed wish, as the blue book will show, of the United States' Minister, I became Inspector-General....." It is of some note that this assertion was made after the death of both Elgin and Bruce.

at Canton and Swatow.¹¹⁷ Lay also, responding to urgent appeals from Peking that he undertake the project, as his last official act before his departure in 1861, in addition to naming his locum tenens, appointed a Commissioner to introduce the system at Tientsin.¹¹⁸ This last port had been added by the Convention of Peking (1860), to the list of ports to be opened. In this, as in other categories, the limits of his achievement are perhaps a more noteworthy feature of his activity.

Since trade was permitted to continue after the Taku affair under

117. According to Hart, the first invitation to establish a foreign Inspectorate at Canton was extended by Lao, the Gov-Gen'l. and Heng-ch'i, the Hoppo, in May, 1859. (Cf. Hart's Inspector-General's Circular No. 25, 1869. Reproduced in full as second part of Appendix D in Morse, "Subjection", pp. 469 ff.). In "Pamphlet" "Letters, Etc." Item 8, pp.12-14, there is what is described as a supplementary memorial by Lao, written in late November, 1859, in which Lao reports his initiative. ((This may be the same document as "IWSM" (Swisher, pp. 642-43) HF 45: 37,3-37b,9. Recorded 21/12/59 - though there are marked differences in the translation)). For Swatow, cf. "Pamphlet" "Letters, etc." Item 9, Lao to Lay 17/12/59, and App.II, Lao to Lay. 15/1/60. Also cf. "IWSM" (Swisher, pp. 643-45) HF 46: 17, 9-19,1. Lao and Ho. Joint Memorial. Recorded 6/1/60.

118. Lay, "Interests", p.5 Kung to Lay. 7/4/61.pp.6-7, "Tsung-How and Hangki" to Lay, Feb. 1861. According to a despatch of de Bourboulon's to the French Ministry of Foreign Affairs (28/6/60), Lay was believed to have inspired Ho to consider the possibility of opening a Chinese Custom House at Macao. Cf. H. Cordier, "L'Expédition de Chine de 1860" (Paris, 1906), p.206. There is no record of any official action directed toward implementing this proposal.

the terms of the old treaties¹¹⁹ and since Swatow was to be opened, by agreements reached after the exchanges of the ratifications of the U.S. Treaty, when Lay was ready to resume his activities in September, 1859, five ports besides Shanghai were "eligible" for the introduction of the Inspectorate. Establishments had been set up for Canton and Swatow by February, 1860. Between February, 1860, and Lay's rather innocuous parting gesture of March, 1861, no attempt appears to have been made to extend the Inspectorate to any of the other "eligible" ports.¹²⁰ The absence of achievement in this connection assumes greater significance when it is realised that there was every reason to believe that at the conclusion of the expedition projected for July-September, 1860, between six to eight additional ports would be opened. Concomitantly, this would have required promptly setting up a similar number of Inspectorate establishments: "one uniform system shall be enforced at every port."¹²¹

119. In addition to previous citations, cf. also "IWSM" (Swisher, pp.607-09) HF 41: 4,2-7b,10. Ho. Memorial. Recorded 1/8/59. The fact that on the occasion referred to, Lay and Edan were summoned poses an unresolved problem: either Edan was still considered a member of the Shanghai Board of Inspectors (which was not Lay's view, apparently) or Lay was considered a more influential British representative than any of the members of the British Consular staff.

120. At the end of 1860, arrangements were being made to open the Yangtze; viz., preparation of regulations and preparation for a second expedition to Hankow, this one to awe or blast all officials - Ch'ing and Taiping - into acquiescence. Because there could be no Ch'ing guarantee for the security of Inspectorates, Shanghai was designated the port of entry and exit for Customs' purposes.

121. Phraseology of "Rule 10".

Obviously, the dearth of even minimally qualified candidates was a major deterrent to rapid extension of the system. Having in mind, also, the time that would be consumed training staff, under the most propitious circumstances, extension would only proceed slowly. But these factors alone do not explain adequately the absence of any extension after February, 1860.

The factors that help to provide an adequate explanation are numerous and have many ramifications. Under the circumstances, they can only be enumerated with but a minimum of definition.

Firstly, the Inspectorate was introduced only at those ports where the initiative was sanctioned by the senior Ch'ing official in the region in which the ports were located. (In this regard, Tientsin followed the pattern). It was, in fact, a fortuitous circumstance that the Liang Kuang Governor-Generalship was briefly held by a Chinese official who was willing to follow Ho Kuei-ch'ing's lead. The Manchu official who became Governor of Kuangtung was dubious as to the merits of the Inspectorate system.¹²² His memorial setting forth his views drew from the Court a comment on the anomaly of paying foreigners in Ch'ing service at the very time foreigners were mounting an expedition against the Court.¹²³ The three senior Manchu officials who held authority over the regions in which the remaining three ports (Amoy, Foochow, and Ningpo) were located,

122. "IWSM" HF 52: 31b,6-34b,10. Kuangtung Gov. Ch'i-ling. Memorial. Recorded 30/6/60.

123. "IWSM" HF 52: 42,3-42b,9. Edict. 3/7/60. (Sic. Refers to preceding as "yesterday Ch'i-ling memorialised....")

while not referring directly to correspondence circularised by Ho, who hinted at the possible desirability of temporarily using "high officials" to arrange suitable customs administration,¹²⁴ memorialised to the effect that their own local officials would be all that would be required to cope with any foreseeable problems.¹²⁵ It is quite certain that at the beginning of 1860, Lay intended to extend the Inspectorate to these other ports. It also appears certain that because of indications of hostility, the plans were postponed.

Secondly, a major deficiency in the early structure of the system impeded its development. In effect, the Inspector-General was a one-man institution. Each Inspectorate was a local agency whose staff and operations were chargeable to what, in the first instance, was a local revenue. In this respect, the operations of the Inspector-General's "office" could not be expanded to meet the expenses of extension without making heavy inroads on revenue needed - especially in the case of the Liang Kiang, in which region the tempo of rebellion was increasing -

124. "IWSM" (Swisher, pp. 639-40). HF 45: 10b,7-12b,2.

125. "IWSM" (Swisher, pp. 645-47) HF 46: 28b,6-30,10. Min-che Gov.- Gen'l. Ch'ing-tuan, Foochow Tartar Gen'l. Tung-shun and Fukien Gov. Jui-pin. Joint memorial. Recorded 15/1/60. The memorial is more directly concerned with the opening of a Treaty port on Taiwan. The establishment of an Inspectorate on Taiwan was not under consideration by Lay. The general attitude expressed has been taken by this writer to be applicable to the other three ports within the jurisdiction of the officials.

for local purposes. Until, or unless, allocations for indemnities or for transmission to the Court could be reduced, there was reluctance to appropriate funds to finance the Inspector-General's functions. At the end of 1860, Lay was trying to reconcile the fiscal (avaricious, in Lord Elgin's view) needs of Hsüeh Huan and the political needs of Lord Elgin.¹²⁶ In the long run, the situation could be expected to rectify itself, but in the short run it had a restrictive effect.

Thirdly, dealing with the difficulties - old and new - in the three ports at which Inspectorates had already been established, occupied a considerable amount of Lay's time and energy. Perhaps, if he had been able to give the whole of his individual attention to the Inspectorate, he might have achieved more. As it was, his not unreasonable personal interests and the demands made upon him by the British envoys¹²⁷ - to which he could not refuse to respond - occupied another quite considerable amount of his time and energy. Yet it may be contended that the difficulties that had to be overcome were of such dimensions that one man devoting himself entirely to the task would have had more than enough to do, without, at the same time, deliberately adding to the range of his responsibilities.

126. "E/B" Elgin to Bruce. Private. Dec. 7-11, Dec. 15-19, 1860. "As regards the Customs, the theory of the Chinese Administration seems to be this - that officers may cheat as much as they please but that no allowance can be made for legitimate expenditures." [15].

127. Vide post, p. 292 ff

Fourthly, insofar as major factors are concerned, the unsettled and chaotic political, diplomatic and military situation had a tendency to discourage energetic prosecution of the extension of the system. Materially and psychologically, the environment was in a condition in which logical consistency in decision-making was almost impossible. No scale of priorities, whether based on the interests of trade, diplomacy or patriotism, could be conceived which would not create dilemmas of responsibility or loyalty. The problem was as acute for "Chinese" as for foreigners, but for the foreigner, pressed more than any other to sit on both horns of the dilemma, the compulsion to inertia would be understandable. High Ch'ing officials, removed from the apparatus of the Court, could be exonerated from complicity in the Taku affair of June, 1859, and in provoking the need for an expedition in the Summer of 1860, but all Ch'ing officials were tainted by the affair of September, 1860, during which a flag of truce was violated and several members of the Anglo-French truce team were executed or died as the result of maltreatment while incarcerated. These were not the ingredients for feeding the springs of single-minded dedication.

The final major factor is one whose implications extend well beyond the focus of the immediate topic; the reasons why the Inspectorate was not introduced at all ⁱⁿ six "eligible" ports up to the time of Lay's departure. The limits of achievement are a reflection of the limitations of the man. The range and complexity of difficulties stemming from institutional factors might, in their cumulative effect, have been over-

riding in circumscribing the limits of possible achievement.¹²⁸ Nonetheless, unique limitations stemming from shortcomings in Lay's personality and deficiencies in his qualifications immeasurably reduced his effectiveness.

He was unable, all things considered, to arouse either respect or strong personal allegiance to compensate for his youthfulness and relative immaturity. His customary responses to criticism took the form of spiteful and vindictive behaviour. His knowledge and experience in general administration were negligible, accounting perhaps for an apparent inability to delegate or share authority and responsibility. His knowledge and experience in customs matters, largely conditioned in the first place by the untypical character of the China trade and in the second place by the untypical character of the Shanghai pattern, restricted his capacity to make adequate responses to the variety of complex customs problems, complicated almost beyond comprehension by the attempt to pour a new occidental potion into an old Confucian bottle. Although, in some particulars, he may have been in advance of most Europeans in his understanding of things Chinese and may have been the one European in whom the "Chinese" had most confidence, in relative, realistic terms, his understanding was severely deficient. The fact that Inspectorates were only

128. Lay asserted, in early March, 1861, that further extension was unwarranted in the light of the instability of the dynasty.
Vide Appendix V A.

introduced at three ports - and none after February, 1860 - could be taken as a partial indication that, premature as the evaluation may seem, the man had reached the limits of his capacities.

B. Serving the British Envoys.

The evaluation is premature not so much because subsequent events positively confirm it, but because the activities of his second role - unofficially diplomatic and political agent of the British plenipotentiaries - which in time paralleled the activities of his first role, have yet to be discussed. The profile of his second role bears a subtle, but unmistakable resemblance to the profile of his first role, not in the manner of a Jekyll and Hyde, but more nearly in the manner of a prosaic Milton.

The treatment of Lay's activities in his capacity as Inspector-General has touched directly upon the dilemmas of his position within that limited context. The evidence and the discussion have not only indicated, however indirectly, the presence of an enigma insofar as he sought to serve the "Chinese" interest, but indications have also been given of the basic enigma of his position as servant to two masters. The account of his efforts to serve the interests of his own Government through its emissaries, Lord Elgin and Bruce, should by direct evidence fill out the pattern of the enigma.

It is well to begin this section by irrefutably establishing that Lay was not, in the course of these activities, officially employed by the British Government according to any precise definition of the phrase.

Even Lay, who insisted on holding the view - repudiated by official statements¹²⁹ - that while he was British Inspector at Shanghai he was still a member of the British Service seconded to the Board of Inspectors, was forced to acknowledge that when he was appointed Inspector-General (for him this meant May 23, 1859) his "official connexion with H.M. service ceased by virtue of a clause in the treaty regulations".¹³⁰

The special circumstances of his association with the mission that negotiated the British Treaty at Tientsin have been described in an earlier chapter. Although Lay in 1862 claimed, "the only acknowledgment that I have received has been the medal granted to me in common with other members of the Embassy,"¹³¹ he had in another sense received a very tangible "acknowledgment". But Lord Elgin was still rationalising the enigma of Lay's dual role so that while this "acknowledgment" would normally be interpreted as establishing that Lay was a member of his 1858 mission, the method and terms of the "acknowledgment" specifically denied that connection. Thus, in July, 1859, six weeks after his return to England (and a full year after the Tientsin negotiations), Lord Elgin wrote an "official" to Lord John Russell which closed:

As Mr. Lay is not in Her Majesty's service I had no claim on his time & exertions and I venture to recommend the

129. Vide antea, Chapter VI pp. 135

130. Lay. "C.B. Statement".

131. Loc. cit.

sum of £500 be given to him as an acknowledgment on the part of Her Majesty's Govt. of the value of the aid afforded by him to the British PP in his negotiations with the Chinese Commissioners.¹³²

Lord Russell's approval was given, instructing Lord Elgin to make the payment and to charge the amount to the account of his special mission.¹³³ A few weeks later Lord Elgin wrote to Lay:

Allow me to request your acceptance of the enclosed Bill of Exchange representing the value of £500....which I have been authorized....to offer you.

I am aware that this....is an inadequate reward for the valuable assistance you gave to me.....,but as I know of no other form in which I could acknowledge your services, I have been induced to request the permission of the Government to place the sum at your disposal.¹³⁴

The sum authorised was, perhaps by coincidence, roughly equivalent to the amount of salary Lay would have had to forego if his leave from the Board of Inspectors from April-July (the three months of the 1858 campaign and Tientsin negotiations) had been granted without pay. However this particular incident is to be interpreted, Lay continued to play an assigned diplomatic/political role for Lord Elgin and for Bruce as well after he received his formal commission from Ho as before: but except for an occasional citation in despatches or private communications to the Foreign Office, he was not treated as having any British official

132. "E/B" Unnumbered. Elgin to Russell, 2/7/59.

133. "E/B" Unnumbered. Hammond to Elgin, 6/7/59.

134. "E/B" Elgin to Lay. Private. 26/7/59.

status by the representatives of the Government nor did he receive any sort of "acknowledgment", until 1863, for his services.

The character of the functions assigned to Lay by the envoys underwent a succession of changes as a consequence of changes in three sets of conditions. The first set concerned the changing conditions under which Sino-British relations were carried on during the relevant period. The second set has to do with the effectiveness of Lay in fulfilling the functions assigned to him. The discussion of this point will include some consideration of Ch'ing attitudes and responses to Lay's alternate role. The third set is related to changes in the situation with respect to alternative choices among available personnel.

There was a change in the relationship between Lord Elgin and Lay just after the return from the Yangtze trip: a change the effect of which was to place upon Lay a greater responsibility for representing political interests by means of quasi-formal procedures. This aspect of Lay's assigned role remained essentially the same through the 18-month period of January, 1859 - July, 1860. Between early July and early December, 1860, Lay was inactive in the diplomatic/political sphere. He was used extensively by Lord Elgin, when the latter returned to Shanghai from Peking, but the Embassy, the instrument for carrying on diplomacy in relation to outstanding political issues, had been moved to the north and its functions restored to the authority of Bruce, who had taken up winter quarters in Tientsin. Bruce had some very definite ideas about the diplomatic/political role Lay could (should) play in the diplomatic environ-

ment then being prepared at Peking.¹³⁵ Because Lay went on leave, however, he did not on this occasion take on this role.

Lord Elgin's plans at the beginning of January, 1859, were indefinite.¹³⁶ He was, quite naturally, anxious to be reunited with his family. As it was, almost two years would have elapsed by the time he could get back to Britain. Nevertheless, he was unwilling to leave until he had exact information as to who would succeed him and as to when his successor could be expected. Also, while his first appraisal of the prospects for favourable responses from the Ch'ing Court had been optimistic, serious doubts based on information from Canton and rumours circulating in Shanghai, quickly led to dissipation of his buoyancy. Consequently, when he set out to add the pressure of his presence to settlement of the unsatisfactory situation at Canton, he left the rather strong impression that he would return to Shanghai, despite having learned of Bruce's appointment to succeed him,

135. Bruce's ideas were embodied in several private letters he wrote to Elgin and Lady Augusta Bruce in the first half of 1861, but the most comprehensive expressions are in an ultra private letter to Russell of 28/4/60 (FO 30/22/49) and "E/B" Bruce to Russell. Private. 5/2/61.

136. The basic information contained in this portion of the chapter is well documented in BPP. [2571], in Oliphant, II and in Walrond, op.cit.

to resume discussions with the Imperial Commissioners.¹³⁷

When Elgin made the decision, at Canton, to set off for home without returning to Shanghai, he concocted a number of plausible reasons to justify it. One which he did not specify can be partly inferred from his own records of the period. He did not apparently reach his decision until after Lay appeared on the scene.¹³⁸ It was true that the favourable news that Lay brought about the more cooperative disposition of the Court and the seeming restoration of the Shanghai-stationed Imperial Commissioners to a position of influence, coincided with the encouraging progress of the punitive expeditions active in the Canton region.

137. There is some inconsistency in the evidence on the point of whether Lord Elgin made it clear to the Commissioners before he left Shanghai that they were to expect him to return. In the official despatches to the Foreign Office and in his letter to Lady Elgin from Shanghai, the reference is to the action to be taken by "I (or my successor)". But in his communication to the Commissioners ("E/B" No. 23. Elgin to Malmesbury. 2/2/59, enclosing Elgin to Commissioners, Shanghai, 25/1/59) no such qualification is stated and it is also clear from Oliphant, II, p. 475, that it was not until he reached Canton and accepted the unofficial report that Bruce was already en route, that he decided not to return to Shanghai to resume the negotiations with the Commissioners. The Commissioners, however, despite the fact that Lay did not personally transmit the official notice until late March, knew of the decision within four days, for their report of conversations between an agent, Huang Chung-yü, and Lay in Hongkong was recorded at Peking on March 1. "IWSM" HF 34: 30b,7-32,1. Further memorial.

138. Oliphant, loc.cit. did not mention the exact date that Elgin made his decision. According to "E/B" ms. Letters journal, as of Feb. 22, the day before Lay arrived and five days after he heard the incorrect report of Bruce's movements, Elgin wrote: "I trust that this visit [to Hongkong] may be the wind-up of my affairs, and that the English mail may decide me to start at once for home." As of Feb. 26, the mail had not yet arrived. When he recorded on March 3 the receipt of the mail he noted that it "brought me not a word either from Frederick [Bruce] or about his plans...." (Cf. Walrond, op.cit. p.310)

The news Lay brought was in the form not only of an official communication, entrusted to him by the Ch'ing Authorities, but it also included Lay's personal report of the results of his private (or quasi-official, in his Ch'ing role) contacts with these officials. This seeming demonstration of the confidence enjoyed by Lay and his apparent self-confidence in his own ability to influence the decisions of the Imperial Commissioners, was apparently all the additional justification Lord Elgin required. He repeated the pattern of early June, 1858, entrusting to Lay the delivery of his official reply and elevating him to the rank of personal emissary charged with representing British policy. That there should be no doubt about Lay's function - even as a Ch'ing official - Lord Elgin requested the cooperation of Admiral Sir M. Seymour in expediting the movement to the north of the small contingent of gun-boats which were due to accompany Bruce after his arrival. Lord Elgin concluded:

Should the Admiral see fit to act on my suggestion... Mr. Lay will be able to point to the gun-boats, as they successively arrive at Shanghai, in proof of the determination....to insist on the faithful execution of the Treaty. It may be hoped that my letter and his representations thus supported, will have the desired effect....¹³⁹

One of the other reasons for Lord Elgin's decision to return home was his expectation that Bruce would have left on his way back to China by the end of January. He was uneasy when he learned, at Singapore, that

¹³⁹. "E/B" No. 28. Elgin to Malmesbury. 7/3/59. Enclosure Elgin to Seymour. 1/3/59.

Bruce's movements were delayed. In sending Lay this news, Lord Elgin added the instruction: "You must keep the Commissioners in a fitting condition and let them understand that he will be at Peking at the proper time to exchange ratifications."¹⁴⁰

There may not have been any formal arrangement defining this reversion of Lay to his 1858 Tientsin role, but other evidence corroborates the change. Between the time of his return to Shanghai, after his consultations with Lord Elgin, and the imminent arrival of Bruce, Lay addressed reports of his activities and the situation respecting the activities (or lack of them) of the Imperial Commissioners directly to Lord Elgin as frequently as opportunity afforded. In a ten-week period from late March to early May there were at least four such reports.¹⁴¹ Further, in his contacts with the Gh'ing Authorities despite his new status and functions in the "uniform system" apparatus, he resumed the guise of the uncontrollably fierce barbarian, behaving with, as Lay would have it, a "firm hand, though, it may be, gently, - and with 'our armour (to their eyes) always buckled on ', act[ing] invariably as if we fully expected bad faith",¹⁴² and by thus behaving, again earning the epithet of being

140. "FL". Elgin to Lay. Private. 12/3/59.

141. "E/B" Lay to Elgin. Private. Identifiable dates for 25 March, 4 April and 25 April. These letters, and the second half of a fourth bearing Lay's signature (probably written early in May) were located among Elgin's papers in a bundle marked: "Papers recovered from wreck of Malabar 1860". Bruce started receiving reports from Lay on May 1, 1859. (Cf. "E/B" Bruce Day-book. Entry for 1/5/59).

142. "E/B" Lay to Elgin. Private. (Unidentified date).

"extremely hateful".¹⁴³

When Bruce finally did arrive in South China at the end of April, having met very briefly with Lord Elgin at Galle, administrative preparations to transfer the Superintendency of Trade and ministerial functions to the north and diplomatic considerations of acting in concert with his French (and American) colleagues, prevented him from leaving Hongkong until late May. In the interim and later at Shanghai - because Bruce refused to enter into face to face communication with the Imperial Commissioners or other Ch'ing officials - Lay acted as Bruce's alter ego. However, it was just a few days before Bruce reached Shanghai that Lay was appointed Inspector-General, a development which appeared to have some influence on Lay's interpretation of his own functions. In the subsequent meetings with Bruce, Lay was also trying to argue the Ch'ing case as to why Bruce should defer his journey north, while at the same time advising him, emphatically, not to be deterred from using the most forceful measures - if needed - to consummate his mission to Peking.¹⁴⁴

143. "IWSM" HF 36: 12b,8-14,6. (Swisher, pp. 557-58 has only translation from 13b,3 to end). Four Imperial Commissioners: Memorial. Recorded. 11/4/59.

144. This information is based on a manuscript of extracts covering a number of pages among Elgin's papers at Broomhall. The extracts are positively from correspondence of Bruce, to an unidentified person, in the form of a letter-journal for the period of June 6 (when Bruce arrived at Shanghai) - July 5, 1859 (when Bruce left Pehchili to return to Shanghai). The relevant entries for this citation appear under the dates for June 7, 9, 10 and 11.

With the departure of the "plenipotentiary"¹⁴⁵ Imperial Commissioners and Bruce, there was no significant part for Lay, who remained at Shanghai, to play. According to the Commissioners, they had deliberately set out to discourage Lay from accompanying Bruce to the north because they were fearful he would, as in 1858, secretly make mischief.¹⁴⁶ It must be presumed that the main tactic, not indicated to the Court, consisted of commissioning Lay as "I.G." It is quite possible that as another tactic, he was appraised of Yin Chao-yun's memorial setting him up as a marked man if he were to make another appearance in the north and especially if, as the Ch'ing Authorities believed, the mission's passage to Peking was going to be resisted.¹⁴⁷ Whether or not these were the reasons, the Commissioners further alleged that Lay was unwilling to accompany Bruce, even after Bruce had asked him to and that, in consequence, Bruce refused to pay any attention to Lay's representations on the Commissioners' behalf.¹⁴⁸

145. This expression is used to indicate the distinction between the regular post of Imperial Commissioner that had been transferred from Kuangtung to Kiangsu and the specially appointed Imperial Commissioners from the Court.

146. "IWSM" HF 38: 31b,8-32b,9. Four Commissioners. Memorial. Recorded. 22/6/59.

147. The translation of Yin's memorial did not appear in the "NCH" until July 23 (vide antea Chapter VII, n.149) but Lay could have become familiar with its contents (in Chinese or in English translation) at an earlier date.

148. "IWSM" HF 38: 31b,8-32b,9, op.cit.

It is possible that in his intercourse with the Ch'ing Authorities, Lay may have behaved in such a way as to justify their interpretation, but from Bruce's reports there is no evidence that he was at any time annoyed with Lay. Bruce continued to discuss personally with Lay the various policies which might be followed and on the day he left he wrote to Elgin that the man he would most regret not having with him in the north was Lay.¹⁴⁹

Before the full impact of the repulse at Taku could be felt, Lay was inactivated by the knifing attack made upon him. A mob, in one of the less reputable sections of Shanghai, excited by rumours that foreign sailors were kidnapping natives for a French-registry vessel loading emigrants, had accosted and were beating into insensibility a European. Lay and the Rev. John Hobson, English Chaplain, who were taking an early evening stroll, on coming upon the scene, sought to intercede. Finding their efforts unavailing and warned that they might also be attacked, they fled. They became separated in flight (Lay, the younger and speedier, outdistanced his companion), the Chaplain being taken into refuge; but the assailants, who were never officially identified,¹⁵⁰ caught up with Lay. By the time the latter was discovered by a member of the foreign police

149. "E/B" Bruce to Elgin. Private. 15/6/59.

150. "NCH" 1859-1860, passim. Fairly substantial rewards were offered for the capture of the attackers. FO 228/274 No. 21 T.T. Meadows to Bruce 31/8/59. Only one alleged suspect was taken into custody ("NCH" No. 475 3/9/59, p.18) but there is no report of his being charged.

force, he had already received several knife thrusts in the abdomen.¹⁵¹ For a day or so following, Lay was not expected to survive,¹⁵² but three weeks later he was reported recovered,¹⁵³ and just over two months later, he made the sea passage to Hongkong.

When he was again fit to work, there was no urgent need for his services as a diplomatic functionary, partly because new policy directives had not yet been received from the home governments and partly because Bruce did not intend to make any new move except from a "position of strength". In this situation Lay's energies were directed toward extension of the Inspectorate.

Once he started to work in this direction, his time was so completely occupied by the difficulties encountered that he was not available for the early period of critical diplomatic manoeuvring preceding the second Arrow War expedition. Bruce expressed his disappointment to Elgin. "It has

151. The factual information is culled from the depositions of witnesses printed in "NCH" No. 471. 6/8/59, p.2 A correspondent to the "Friend of China" (reprinted in "LCT". 17/10/59, p.507) purported to believe Lay had been singled out because of the animosity of the local populace and officials towards him. The "Times" reference to the incident, however, (leader [W. Cooke or L. Oliphant?] 21/4/60) described Lay as "the most popular European in China". For a summary Chinese account cf. "IWSM" HF 41: 44,6-47b,6. Ho Memorial. Recorded 22/8/59.

152. "JMA" II.A. 2(37) Whittall to J. Jardine. 31/7/59. Also Capt. Baylis to Hongkong. Same date. "LCT" 27/9/59, p.484. "We are informed by private letters that Mr. Lay is so much injured that his medical attendant gives but little hopes of his recovery."

153. "NCH" No. 437. 20/8/59, p.10. "IWSM" HF 42: 25,4-26,10. Ho. Memorial Recorded 5/9/59. On 26,5 Ho refers to Lay and the other[s] as having recovered. Several eruptions occurred on July 29 during which a few men were killed and several wounded.

been a misfortune that during the last three months Lay has been in the South...."¹⁵⁴

Lay's absence during this period had an unexpected result. The vacuum was partially filled by the initiative of some wealthy Chinese merchants who were facing the double threat of Taiping resurgence and renewal of the foreign war. The contact man for the group was "Takee" (Yang Fang), who held almost the same relationship vis à vis the Shanghai area Ch'ing officials as Lay did to the British envoys, with the exception that Yang Fang carried on his liaison through the Shanghai senior of Jardine's - James Whittall.¹⁵⁵ After Lay got back to Shanghai on March 31, he resumed his diplomatic/political role for Bruce¹⁵⁶ and then very briefly for Lord Elgin. But because there were no "plenipotentiary" Imperial Commissioners on hand and because the Ch'ing officials no longer relied on him exclusively, his activities had much less significance than they had had a year earlier.

In giving his explanation of why he did not invite Lay to join him in 1860, Lord Elgin still adhered to his earlier concept of the role Lay should play:

154. "Ibid". 6/3/60. Lay had, in fact, been in the south since October and, further, did not return to Shanghai until March 31.

155. These developments, from the Ch'ing records, are ably discussed by Banno, op.cit. pp.71-73. The part played by Jardine's is briefly noted in Whittall's letters to Hongkong. "JMA" II. 5(2)(23). Feb. 16 and Apr. 17, 1860.

156. FO 30/22/49. Bruce to Russell. Private. 28/4/60. "E/B" Bruce to Elgin. Private. 28/4/60, 30/5/60 and 11/7/60. (the last letter was sent to Elgin after he had started for the north).

I have also sent for Parkes. I do not take Lay, because I hope that he may be employed as the adviser of the other party. He is a Chinese official, and when they are thoroughly puzzled, I hope that they may look to him for counsel. This would go far to secure a satisfactory settlement of our difficulties.¹⁵⁷

Taking into account the changes that were already evident, in order for Lord Elgin's expectation to have been considered realistic, it would have had to have been based on the corollary expectation that Lay would soon be enabled to exert his influence directly in Peking. If Lay were to have the expected influence, then as a "Chinese" official it was also necessary to avoid again having his identity become indistinguishable from that of any other junior British functionary. Thus, the pendulum of the enigma was again swinging in the opposite direction. When Bruce proceeded to Peking following the cessation of hostilities and conclusion of peace, Lay did not join his entourage. When Lord Elgin returned to Shanghai, he dealt with Lay, for the most part, as though the latter were a Ch'ing official.

By the time the fine points of his Ch'ing position were defined and he was invited by the Ch'ing Authorities at Peking to associate himself with other Ch'ing officials who had functions in the central government apparatus, Lay's own conception of the role he should play decided him against responding to the invitation. Without either Lord Elgin or Bruce directly on the spot to exert personal pressure on him, he was able to

157. "E/B" ms. Letters-journal. 5/7/60. There were some reports that Lay was to accompany Elgin. Cf. "LCT". 27/6/60, p.329.

dismiss the one and ignore the other. The immediate reaction of both these men to this disruption of their grand designs was strong. Lord Elgin, since he was helpless to do anything about it, was filled with disappointment.¹⁵⁸ Bruce, while he thought he could influence Lay, was filled with consternation,¹⁵⁹ and, after he discovered Lay had gone, with strong resentment.¹⁶⁰

In the last analysis, the matter of Lay's effectiveness in fulfilling his diplomatic/political role must seem to have been relatively unimportant. His function in the process of resolving the problems plaguing Sino-British (and/or Sino-foreign) relations, though vital to the process, was not of the kind that could exercise a decisive influence on policy and, therefore, the success or failure in resolving the problems could not be ascribed to him. But another facet of the enigma of his position was that the British envoys (who did possess "full powers") and the Ch'ing officials in the Shanghai region (who did not possess "full powers") both tried to use Lay as though he could exercise a decisive influence.

158. "E/B" Elgin to Bruce. Private. 16/5/61. "I am very glad Lay has seen [sic] Kang [sic] but I am somewhat alarmed at the determination he has made to come home on leave."

159. Lay, "Interests", p.8.

160. "E/B" Bruce to Elgin. Private. 23/5/61. "I am much annoyed at Lay going home without coming up here - the Prince wd have done any thing he wished & who knows by next year whether the position will be the same? - I believe his health is very bad - this is his only excuse - but the climate of Peking is so different from that of the South of China, that I know of no better sanatorium." (By July, Bruce's opinion of Peking's climate had changed a bit, but he wasn't thinking of Lay then).

Lay could and did, with greater or lesser precision, interpret the basic positions of each side to the other. The Ch'ing officials contacted by Lay clearly understood British intentions. What they did not seem to understand was that Lay, fully alive to their problems, was unable to alter the envoys' determination to carry out those intentions. In this connection, Bruce partly exonerated the Shanghai group from complicity in the Taku affair: firstly, because he felt, legitimately, that Lord Elgin had committed himself to modifications in British policy (viz., non-exercise of the permanent residence option) and then had left without resolving other points which the Imperial Commissioners hoped to have modified;¹⁶¹ secondly, because of Lay's contact with the group, Bruce had had a clear indication that his mission could expect to be obstructed at Taku.¹⁶² The other result was that Lay also was absolved of responsibility for the failure of the preliminary "negotiations".

While the analyses made by Bruce and Lord Elgin (in the framework now of his second special mission of 1860) were penetrating enough to enable them to understand Lay could not be held personally responsible, they could not understand that the role which they expected him to fill was a

161. "E/B" Bruce to Robert Bruce (a younger brother) 5/2/60. Among the brothers, Lord Elgin was known as "Jack".

162. Hsueh confided to Lay in the utmost privacy "that the hostile party had got round the Emperor and that they required another lesson at Tien-sin & that if they were well-founded the Commissioners would recover their influence and things go right -" ("E/B". Extract from Bruce letter-journal for 12/6/59). Bruce had been warned of what to expect before he left Hongkong by R. Hart, who had submitted a lengthy memorandum to him. (Cf. Morse, "Conflict", p.575).

false one. Lay was as ineffective in acting as counsellor to or on behalf of the Ch'ing officials in the same measure as they were ineffective due to their lack of power to exercise a decisive influence on formulation of policy at the Court.¹⁶³ The impersonal confrontation of incompatible concepts of diplomatic/political intercourse on a governmental level could not be avoided despite the best understanding that might be achieved among a few individuals. Lay and Hsüeh Huan, in particular, had achieved a remarkable rapport in their mutual contacts and it was the latter, on the eve of the second mission who, in almost the identical terms he used on the eve of Bruce's mission in 1859,¹⁶⁴ recognised the dilemma on the governmental level and the enigma on the individual level. There were doubtless personal and partisan objectives which affected Hsüeh's appraisal of the situation, but he was candid in his agreement that the basic issues could only be resolved by the application of physical force against the Court.

163. This lack of power was especially marked in May - June, 1860 when Ho Kuei-ch'ing proved incapable of stemming the Taiping resurgence and was speedily relieved of all his offices. Banno, op.cit. pp. 45-46, 110.

164. Lay prepared a highly confidential memo describing a series of four meetings he had with the Ch'ing officials between April 1-20. ("E/B" Bruce Day-book. Under April 20, Bruce reported a three-hour discussion between Lay and Hsüeh, immediately after which the latter purportedly was to set out for Peking). Bruce sent a copy to Russell (enclosure in FO 30/22/49. 28/4/60) and one to Elgin ("E/B". Private. 30/5/60). Except for one or two minor changes and the omissions of the names of the Ch'ing officials, Lay included this memo as "Appendix B" in his pamphlet "Interests". The matter referred to here appears on p. 71

This appraisal was also an indirect admission of the relative ineffectiveness of both Lay and himself to fulfill the functions assigned to them by the envoys and the Court respectively. Part of Lay's "ineffectiveness" in 1860 was due, of course, to his extended absence from Shanghai. But it would also be consistent with the foregoing analysis to suggest that the Ch'ing reliance on the attempt to negotiate a modus vivendi through the Chinese merchants was another manifestation of the limitations of his position. Another one of the ironies (numerous as they appear to be) of the general situation was that, partly as a result of fortuitous developments and partly as a result of the success of allied arms, Hsueh's position and relative influence increased while that of Lay's tended to decline¹⁶⁵ - developments which may also have been related to Lay's decision to go on leave.

The third, and final, set of changes that affected Lay's functions is related to the greater opportunities which opened up for making alternative choices in employment of available personnel. In 1858, the number of men who were linguistically qualified and who had some knowledge of local affairs was extremely limited and the demand was much greater than the supply. Quantitatively, by early 1860, the pressure of demand

¹⁶⁵. Robert Hart, who Lay recommended as one of his locum tenens in 1861, and who eventually succeeded Lay in 1863, gave an appraisal of the ultimate impact of the changed relationship. (Cf. "E/B" Bruce to Russell. Private. 2/2/64. Enclosing copy of Hart to Sir F. Bruce 14/1/64. Notation on cover of Bruce's transcribed copy: "Circulated to Cabinet"). "Vide" Appendix IX, B.

slackened, especially because of the Taku affair, and the supply of young trainees substantially increased. A few of the younger men who had first journeyed to China before 1856 were becoming sufficiently competent to fill administrative posts and a number of those of the "class" of 1857-58 were proving adequate to carry out minor liaison duties.

Thus Lay's services could be dispensed with in 1859, and in 1860 not only was it possible for Lord Elgin to "send for Parkes", but when, later, Bruce wintered in the north, he was able to keep Wade with him at Tientsin while a relative "unknown", T. Adkins, could be left at Peking on his own to make the preliminary arrangements for the permanent embassy.¹⁶⁶ Lord Elgin having found Parkes, during the second expedition, "one of the most remarkable men [he] ever met" and having also decided that he was at least the equal of Lay in his facility to speak Chinese,¹⁶⁷ brought Parkes back to Shanghai. The longer his association with Parkes continued, the higher was his regard for him, leading Lord Elgin finally to describe him as "our best man".¹⁶⁸ When Lord Elgin left Shanghai for Hongkong to conclude the last business of his second mission, he again took Parkes along despite the fact that Lay was at Hongkong and despite the fact that Parkes was urgently needed to assist in the arrangements being made

166. Three "senior" men, Wade, Parkes and Morrison, were all able and willing "to remain alone at Peking...." Walrond, op.cit. p.373.

167. "Ibid." p. 353

168. "E/B" Elgin to Bruce. Private. Dec. 15-19, 1860 [Dec. 15].

for "opening" the Yangtze to regular trade.

Lay was so enmeshed in Inspectorate difficulties that he seemed not to be aware nor resentful of the changing patterns affecting his position and function. At this juncture, he even appeared grateful to be able to share some of his responsibilities and to accept recommendations from Parkes on Customs collection procedures connected with the Yangtze operations.¹⁶⁹ Lay was beginning to give indications that for a time, at least, he wished to be free from serving any master.

This brief presentation of a few of the aspects of Lay's diplomatic/political role does not do full justice to the part he actually played in the events of 1859-61. His own claim that he "was employed by Sir F. Bruce in his political relations with the Chinese - being in fact the medium of his communications with the Chinese Govt - to an extent not imagined by the Foreign Office, and which it [was his misfortune that he] did not take care should be duly known",¹⁷⁰ was one of the few he made on his own behalf that was not an over-statement. Sir H. Parkes, almost a decade later, also testified to the nature and extent of Lay's activities.

[Lay] quitted [the China] service for that of the Chinese Gov't in 1855, but he continued to be consulted and employed both by the late Lord Elgin and Sir Fred Bruce, in the most

169. "E/B" Parkes to Elgin. Private. 9/4/61. Lay, as Parkes noted in his letter, was already homeward-bound from Shanghai.

170. FO 17/462. Lay to Hammond. 19/1/66. Lay had written to Clarendon on Jan. 13, submitting himself "as a candidate for the Secretaryship of Legation at Peking, which is about to be vacated by Mr. Wade."

confidential manner, throughout the operations in China which extended from 1857-1861.¹⁷¹

However, Lay's energy and his willingness to accept the functions assigned were, alone, inadequate to resolve the enigma of his position and to compensate for his personal limitations. The enigma, heretofore copiously if not lucidly defined, was an inherent characteristic of the embryonic stage of Sino-foreign relations. Lay, having acquired well above-average qualifications in a very few specialised functions, offered one of the rare ingredients for promoting the development of those relations. Perhaps an appropriate analogy for Lay's function would be that of the food in the seed which nourishes the fledgling and then dissolves. The analogy may have further application in that this food has a composition which precludes it from becoming identified in the self-sustaining plant. Thus it could appear to "one of the highest living authorities on China (not Sir John Bowring, I need scarcely say)",¹⁷² writing in retrospect some three and a half years after the events reviewed:

Secondly, I have always said, that Mr. H.N. Lay is a person of no influence with the Chinese, but only the creature of an accident and ill-fitted even for Custom-house chief-inspectorship.

171. FO 262/188 No. 104. Parkes to Clarendon. 31/7/70.

172. Quoted by London Correspondent "A.W." in "China Mail", Supplement, n.p. March 3, 1864. The identity of the "authority" is not known. The paper records the date of transmission as Dec. 11, but on internal evidence, the report could not have been sent before Jan. 11.

These last remarks have been formulated with reference to Lay's diplomatic/political role, but they could with almost equal relevance refer to his role in the Inspectorate - as a foreign servant in Ch'ing employ. This, in turn, opens the way for refocussing on the parallel patterns of the two profiles. The nature of the functions he was called upon to fulfill and the enigma of his efforts to serve two masters were exhausting Lay's resources. The concluding evidence upon which this evaluation is predicated is to be found by taking a closer look at his decision to take home leave.

The only reason which Lay would divulge to Bruce and Prince Kung was related to the wounds he had received in July, 1859, almost a full twenty months earlier.¹⁷³

Considering all the activities he was engaged in between October, 1859, and March, 1861, which included at least two other trips to Hong-kong and getting married, even Bruce was incredulous that Lay should plead his injuries of 1859 as an excuse.¹⁷⁴ From the point of view of the British Minister accredited to the Manchu Court (which was not the perspective that predominated among the majority of foreigners - especially British - taking an active interest in Chinese affairs in early 1861), it

173. Both Morse, "Submission", p.139 and J. Bredon, op.cit. p.59 asserted the knifing took place in 1861 and that it was the immediate cause of Lay taking leave. After 1863, Lay and Hart, each for his own reasons, desired to foster this impression.

174. Vide antea, n.160.

was inconceivable that any responsible person could excuse himself from the difficulties of his office and the positive opportunities opened to him on such a relatively feeble pretext.¹⁷⁵ It was only when he discovered that Lay was not as indispensable as he had believed, that he was able to concede that the general state of Lay's health justified his taking leave.¹⁷⁶ When, indeed, all the reasons - actual and probable - for Lay's decision are taken into account, the matter of his physical health does not stand out as being of primary importance.

Factually, Lay wrote an extremely frank letter to Lord Elgin divulging the principal reasons for his decision.¹⁷⁷ Confirming Count Eulenburg's report of his private discussion with Lay, the main reason, expressed in its simplest terms was that, based on Wade's personal appraisals conveyed privately to Lay,¹⁷⁸ Lay considered the Manchu prospects for survival very poor and he did not intend to be too closely

175. FO 17/351 No. 45. Bruce to Russell. 9/5/61.

176. FO 17/353 No. 85. Bruce to Russell. 7/7/61.

177. Vide postea Appendix V A for full text.

178. The only portion of Wade's letter available are the extracts quoted by Lay. Another record to confirm that these views originated with Wade is in "LCT", 13/5/61, p.267, where the following appears: "The China Mail" affirms on 'good authority' [Lay? or possibly Hart via Lay?] that the Government of Peking is in a state of confusion and that Mr. Wade writes that the dynasty will be utterly destroyed, or in the expressive language of the "China Mail", 'go to smash', if the Emperor delays his return much longer." Wade privately wrote a long letter on his views to Elgin in July, 1861. An extract relevant to this subject is reproduced in Appendix V B.

identified with a dynasty whose demise might be imminent. He estimated that within a year (the term of his leave), the issue of survival or death would be resolved and he would be in a stronger position to carry out his dual role in the Ch'ing service once proof of its vitality had been given.

Although he did not mention this to Lord Elgin, Lay was presumably aware that Wade, too, was seeking to arrange some sort of leave that would permit him to take up again his sinological pursuits.¹⁷⁹ Wade had additional, different reasons for being dissatisfied with his position, but the important point was that he was also prepared to divest himself of his responsibilities in order to satisfy his special interests.

Another reason divulged by Lay in his letter was that by taking leave it would give him "an opportunity of explaining at home what the Foreign establishment is". Lord Elgin could hardly have considered this flattering to himself, besides which, though there was some opposition to the Inspectorate idea expressed in the press and Parliament, it was receiving the fairly influential editorial support of the "Times",¹⁸⁰ and favourable notices in other periodicals.

179. FO 17/351 No. 26. Bruce to Russell. 9/4/61. Enclosing Wade memo dated 15 March 1861.

180. Cf. especially leaders of Jan. 9, May 30 and June 3, 1861 - all printed before Lay had reached England.

Apart from what is on the record, Lay had other strong reasons for desiring to take a home leave at the earliest opportunity. He had been in China, without having had a home leave, from the time of his arrival as a fourteen-year old boy in 1847. He had not seen his widowed mother throughout this period. He was the eldest of her children and the first to take a spouse, one whom she may not as yet have met.¹⁸¹

It would not have been unusual, either, if Lay had felt the need to renew his acquaintance with the occidental world. Most of his knowledge of the changing character of his homeland - economic, social, technological - was acquired at second hand. For a high functionary, one of whose primary objectives was to encourage the introduction of occidental achievement into China, his lack of firsthand knowledge in all probability, would have made him feel, at best, uncomfortable.

In this vein of probable reasons, the attitude of his wife, almost ten years younger than he, may have had some influence. According to a family tradition she was a strong-minded woman who, if she was to bear children, desired to bear them under conditions in which the best

181. Lay married a daughter of the eminent sinologist, Dr. James Legge. The Legges had left England for China, in the summer of 1859.

facilities were available.¹⁸²

When all these reasons - factual and probable - are taken into account, no one, nor all together, seem compelling enough to explain the precipitousness of Lay's decision. If, however, these reasons can also be viewed as rationalisations of a mental fatigue induced by the dilemmas and enigmas of his dual role, the compulsion to be extricated from an impossible situation, impersonal as well as personal, when translated into the decision, provides it with a greater degree of reasonableness.

This discussion can be fittingly concluded by reference to the following three selections. The first is a prognostication made by the leader-writer for the "London and China Telegraph" when commenting on Lay's part in introducing the Inspectorate at Canton in 1859:

It is particularly unfortunate for British prestige that the man who takes the lead in it acted as interpreter to Lord Elgin. Truly, no man can serve two masters. This he has lately attempted, and, if we mistake not, will soon lose both.¹⁸³

The second selection, albeit an introspective appraisal confided by Bruce to one of his sisters, is in point of time and content strikingly relevant to Lay. It was written from Tientsin on January 7, 1861:

182. The writer is indebted for this suggestion to the late Mrs. Frank Lay. The tradition has some support in that a daughter was born to the H.N. Lay's on Jan. 30, 1862, in London. ("LCE" 10/2/62, p.183). Family records show that the first of their nine children was a boy (G.T. Lay) who was stillborn. The time factor can be reconciled if this child was actually the product of a four - or five-month miscarriage in China.

183. 15/12/59, p. 36

[Isolation in a high office] is a severe trial on one's spirit and energy - I don't think one gets as much credit for sticking to it as one deserves - It requires a peculiar temperament & a deal of endurance not to get tripped and broken by the difficulties that surround one, the want of appreciation of them in England & the absence of relief derived from new faces and new topics - There is not a mail which does not carry some decision of mine, in which I stake on imperfect information my avenir & credit, and which may not be laid hold of against me by those who trade on criticizing après coup the actions of a man who must act, often where he would avoid doing anything, if he could.¹⁸⁴

The last selection is an indication of Lay's attitude during the early part of his home leave. It is part of a précis of a letter he wrote on October 7, 1861, to his personal business agent in Shanghai:

Acknd. receipt of pamphlet cont[ainin]g Chamber of Commerce's list of grievances. I am come home for rest, and am therefore (beyond just keeping one eye open) profoundly indifferent as to Customs squabbles - may both parties enjoy their fun!¹⁸⁵

When Lay and his wife embarked from Shanghai on April 7, 1861, it seemed to have been accorded no more attention than that usually found in notices of passengers on departed vessels.

184. "E/B" Bruce to Lady Augusta Bruce. 22/11/58.

185. Précis, extracts and copies of letters and memoranda made by H.N. Lay in a register marked "Private", covering the period October 7, 1861 - November 10, 1862, while on leave in England. (Hereinafter cited as: Lay, L.R.) Transcripts made by this writer from the manuscript kindly loaned by H.N. Lay's great-granddaughter, Mrs. A.G. Pocock, Keeper's Cottage, Moor Park, Farnham, Surrey.

Chapter 1X

Serving Two Masters - third phase: 1861-1862

H.N. Lay arrived in England, after an unbroken absence of fourteen years, early in June, 1861,¹ just short of his twenty-ninth birthday. The lads who had been sent off by an impoverished widow had justified the risk undertaken when she used the meagre grant accorded her from public funds, in recognition of her deceased husband's services, to launch her two eldest sons on careers in China. H.N. Lay, at least, had more than compensated for the almost total obscurity that enshrouded his next younger brother.

Neither his fame nor his fortune were of spectacular proportions, but not only was he the high-salaried Inspector-General, albeit on leave, of the "Celestial Empire's" Maritime Customs Service, he was also a man of property - having invested the surplus at his disposal in land and building in the Shanghai Settlement.² Though his holdings were not large, property values had appreciated considerably (concurrently with a commodity-price inflation) as a result both of the growth of Shanghai as a commercial and military "entrepôt" and of the large refugee influx, occasioned by the increase of rebel activity after 1859. In a sense, also, Lay was a protégé of Lord Elgin whose public image, tarnished by the 1859 Taku affair, had been restored by the victory at Peking in 1860.

1. "E/B Elgin to Bruce. Private. June 10, 1861. Also "LCE" III (June 1861) 433.

2. Periodic references to Lay's holdings appear in Lay: "LR" in the notes of his letters to "Moncreiff" who acted as his agent. This was probably George Moncreiff of Moncreiff, Grove and Co., a small British firm which failed in 1857-58.

While Lay's name might not have been too familiar to those not interested in the China trade, he was included among a coterie of China career-officials who were usually noticed favourably, in contrast to consistently unfavourable comment on Lord Elgin, in the leader columns of the "Times".³ Relative to his position at the start of his career, then, he was still a young man who had already "come a long way".

Lay's return, nonetheless, was perhaps most notable for the lack of public attention it was accorded. This belies, to some extent, the frequent assertion that recognition of his stature as a public figure encouraged him to exaggerate his own importance.⁴ At the same time, it would be well to recall that the world did not look the same from London as it did from Shanghai. This was especially so in two respects at least in the Spring of 1861. With respect to occidental affairs, European statesmen were barely recovering from the crises connected with events on the Italian peninsula, when they were confronted with the war between the Union and the Confederacy. With respect to China affairs, the military and diplomatic victories of 1858 had been all but obliterated by the repulse of 1859 and the expedition of 1860.

3. "Times", 1860-61, "passim". Also "E/B". Elgin to Russell. Private. Apr. 21, 1861.

4. Bredon, op. cit., pp. 70-71. Also Wright, "Tariff" p. 170. Both refer to "Flattering" notice and reception. There was ample notice, especially in late 1862 and 1863, but little of it was flattering. They also refer to his award of a "C.B.", but he did not receive this until several months after his return to China in 1863.

Lord Elgin, although hardly more than a secondary "hero", had arrived home several weeks before Lay and was, in general, being acknowledged and fêted in a manner befitting his station. As far as those entitled to acclaim on grounds other than eminence, the limelight had shifted - not without the encouragement of Lord Elgin himself - to Harry Parkes.⁵ There was thus little reason why Lay should be the focus of attention.

Although there was no public acknowledgement of his return, he was afforded opportunities to put himself forward had he been so inclined. From the time Lord Elgin learned that Lay was on his way back, Elgin supported his own position against the objections raised by the Chancellor of the Exchequer, W.E. Gladstone, to the manner in which the indemnity payments were being arranged⁶ and to pressures brought by salt merchants, who had members of Parliament petitioning on their behalf to have salt removed from the contraband category,⁷ by advising the complainants that if they remained unconvinced they could soon discuss these matters with the man who was most competent to deal with them. Lay did visit Lord Elgin on a number of occasions during the first few weeks after his return and he was in touch with a delegation of the salt merchants.

5. Parkes did not actually return until 1862 - Lane-Poole, op.cit. I, 465 - but he was the popular "China hero" for the prominent part he had played in the expedition of 1860. He was supposed to have returned in 1861, but Bruce delayed his leave. For Elgin on Parkes, "E/B" Elgin to Bruce. Private. June 23, 1861.

6. "E/B" Elgin to Gladstone. June 1, 1861.

7. "E/B" Elgin to Bruce. Private. June 10, 1861. Also FO 17/364. Russell to Mr. J. Tollemache, M.P. June 22, 1861. For meeting of Lay and Tollemache vide "E/B" Elgin to Bruce, Private. June 23, 1861.

However, he does not appear to have developed any regular liaison with any Government department.

Another channel opening to Lay is referred to in a letter from Lord Elgin to Bruce. Lord Elgin, almost with a note of chagrin, reported that Lay had declined his invitation to attend the annual dinner meeting, at the Crystal Palace, of the Society of Arts, at which function Lord Elgin was to preside, because Lay had a dinner engagement with the Times "expert" on China, Wingrove Cooke;⁸ the very man whom Lord Elgin felt was responsible for that journal's hostility towards him! Here again a significant contact did not have the immediate result of bringing Lay to public notice.

Finally, while it has been asserted that the condition of Lay's health was not a primary consideration in his decision to take leave during a critical phase of developments in China, he was not, in fact, well. As indicated at the close of the last chapter, several months after his return to England, he was still disinclined to involve himself in the controversies publicized by the Hong Kong and Shanghai Chambers of Commerce, because he had "come home to rest". Several months later still, before it was absolutely certain that he would be called upon to remain in England to act in an official capacity for the Manchu Imperial Government, he intended requesting Prince Kung for an extension of his sick leave because he did not feel sufficiently recovered from the exertions of his last three years in China to resume the burdens of his official responsibilities.⁹

8. "E/B" Elgin to Bruce. Private. June 23, 1861.

9. Lay, "LR". Lay to Hart. Jan. 10, 1862.

Despite his wish to be free of involvements, he had assigned himself one important project for the period of his leave: to solicit from eminent British legal authorities formal opinions, to which HMG would become bound, on the limits of legal and political jurisdiction affecting the personnel (especially "foreigners") and operations of the Foreign Inspectorate system.¹⁰ At the very beginning of October Lay confined his initiative to this project, but the resumption of this activity coincided with the receipt of a series of letters from his two "locum tenens", FitzRoy (permanently stationed at Shanghai) and Hart¹¹ (who, after several weeks residence at Peking, had set out on a tour of all the ports where Inspectorate offices had been opened). The latter, in particular, bombarded him with requests for his advice on new problems as well as old and with an intimation of a new major project for which, even while Lay remained in Britain, his services would be required.

The new problems were essentially a magnification of the old problems that had arisen in the operations of the Inspectorate system when it was initiated at Shanghai. There was not much that Lay could do from England about the problems, whether old or new. They arose from day to day developments and could not be postponed pending exchanges of correspondence. The frustrating consequences of referring to distant decision-makers, the stock-in-trade of harassed diplomats, was one of the principal reasons for the clamour being raised by the Chambers of Commerce.

10. Lay, "LR". Lay to Hart. Oct. 7 and 26, 1861

11. Loc. cit.

In most instances, such as in the problems connected with the extension of direct Inspectorate operations to Treaty Ports on the middle reaches of the Yangtze, he could but register his disapproval on the grounds that the programme of extension was premature.¹² In other instances, on problems such as methods of dealing directly with Prince Kung, he would expiate on general principles; as when he wrote to Hart:¹³

".... I am so afraid of Kung's doing the wrong thing during your absence. He ought to have you by his side to coach him and watch him daily. I think he is hardly able to run alone yet. And don't trust him or Wanseang further than you can see him [sic]."

In still other instances, in which the problems seemed to strike at what Lay considered the foundation of the Inspectorate system, he was unequivocal in laying down "the law". Thus, in countering proposals for the establishment of mixed tribunals composed of Consuls and local Ch'ing officials to deal with alleged infractions of customs arrangements, Lay threatened to resign if such tribunals were instituted.¹⁴

Many of the problems, however categorised, resulted because of the lack of clear policy directives from the Home Government to the British Minister, F.W.A. Bruce.

12. Lay, "LR" Lay to Hart. Jan.8, 1862

13. Loc. cit.

14. Lay, "LR" Lay to Hart. March 26, 1862. Appendix VI, A.

Since the Inspectorate was an instrument sanctioned, if not imposed, by the Treaty Settlement, Lay decided to discuss with the Foreign Secretary, Lord John Russell, and his Under-Secretary, A.H. Layard, the difficulties created by the Government's dilatory behaviour.¹⁵ Lay's approach, of course, coincided with the flood of merchant protests, but these protests had been transmitted along with a series of official despatches and personal letters from Bruce at Peking reaffirming his own unequivocal support for the Inspectorate and inviting, though not demanding, an official statement confirming in specific terms the principles which he was using as guides for his on-the-spot decisions.¹⁶ Lay's presence in London appeared to have the effect of changing an attitude of apathetic indifference to one of active prevarication. When the Foreign Office was armed with a sufficiency of lengthy memoranda from Lay, Lord Elgin, Bruce, Wade and Hart¹⁷, it commenced during the first quarter of 1862, embodying, in a succession of despatches, formulations of policy based on the representations and interpretations advanced by these gentlemen.¹⁸ Their views were usually opposed to the special pleadings of merchants and Consuls and tended to defend the inherent, as well as the treaty, rights of the Imperial government.¹⁹

15. "Ibid." Lay to Hart. Oct. 26, 1861 and Dec. 10, 1861.

16. FO 17/357. Bruce to Russell, passim. FO 30/22/49. Bruce to Russell. Private, esp. Dec. 2, 1861.

17. Much of the information on this topic was presented in BPP (3104) Further Papers Relating to the Rebellion in China. With an Appendix. (London, 1863).

18. FO 17/380. (Domestic Various - 1862), esp. Board of Trade to Foreign Office, Feb. 2, 1862. Also FO 228/318. Despatches. Russell to Bruce. 1862

19. "Vide antea" n.16 and 17

Lay's memorandum (ostensibly confidential), which had been written in response to an invitation from Hammond with Lord Russell's approval, included a scathing denunciation of the leading merchant houses in China, citing a series of alleged infractions in deliberate defiance of customs regulations and administration. It was typical of Lay's partisan "style"; intemperate in language and clever in presenting evidence that was inferential rather than incontrovertible.²⁰

The new project, as distinct from the problems, was only an intimation, because in one series of letters which Lay received in one batch from Hart²¹ the latter reported both the qualified approval and then the subsequent retraction by Prince Kung, for Hart's proposal to form a para-naval flotilla, to be employed partly to assist in the suppression of rebellion (especially of the Taipings on the Yangtze) and partly to constitute the enforcement arm of the Customs' Inspectorate. Lay's reaction to Kung's ambivalence is significant. He replied to Hart:

Certainly, the enlistment of Foreigners on the scale [originally, ten vessels, with a total complement of about 270 foreigners] you propose by the Ch. Govt. is a very, very serious question, and I don't wonder that Kung hesitates.²²

20. FO 17/367. Hammond to Lay. Dec. 12, 1861. Lay, "LR". Lay to Hart. Jan. 8, 1862. "Ms" of Lay's memo in FO 17/380.

21. Lay, "LR". Lay to Hart. Oct. 7, 1861.

22. Loc. cit.

Lay was probably not fully aware of the more immediate and, perhaps, more cogent reasons for Kung's hesitation: the continued instability of the dynasty in the face of the 1860 defeat; the intensified rebel activity, which in its turn was nourishing the growth of quasi-autonomous regional powers; the Hsien-feng Emperor's deteriorating health (the report of whose death reached England as Lay was composing his acknowledgement of another series of Hart's letters). His own reservations, however, were sufficient to lead him to exercise extreme caution, at the end of October, in pressing inquiries as to the feasibility of the scheme from the standpoint of soliciting support from HMG in Britain.

But in the weeks that followed, on the premise that the scheme might, in fact, prove acceptable,²³ Lay broadened his terms of reference when he presented his questions for the opinions of his legal consultants. He also corresponded with Captain Sherard Osborn, erstwhile commander of Lord Elgin's flagship, HMS "Furious", during the first mission (1857-59), about the possibility of his becoming the principal officer of the proposed force.²⁴ Through his contacts with Wingrove Cooke who, in his professional capacity, concurrently acted as one of the initial legal advisers in Lay's projected list of consultants, Lay was able to sound out the editor of the "Times", John T. Delane, on policies toward China which he would be prepared to support through the leader columns of the paper.²⁵

23. Lay, "LR". Lay to Hart. Dec.10, 1861.

24. "Ibid". Lay to Hart. Oct.26 and Nov.11, 1861

25. "Ibid". Lay to Hart. Nov.11, 1861

As noted, the activities connected with this project were peripheral. Despite the fact that he learned that the wheels of the gods, "civilization" and technology notwithstanding, ground almost as slowly in London as in Shanghai,²⁶ Lay's success in achieving his major objectives was noteworthy. On the diplomatic front, the case (which had culminated in his lengthy memorandum on customs' questions) he presented to Layard, and subsequently to Hammond, who Lay felt, was inclined to favour the merchants, paralleled the Board of Trade's concurrence in Bruce's interpretations of policy on issues related to trade regulation and to customs administration.²⁷ On the legal front, the consultants completely and unanimously supported, in their formal opinions, Lay's position. They affirmed the legal immunities of foreign (British) personnel employed in the Inspectorate for acts carried out as agents of the Imperial authority. They affirmed, in essence, the primacy of the political arena, with the representatives of the "head" of each state the adjudicators, as the "court" of final appeal when interpretations of jurisdiction and rights were at issue.²⁸ Since these opinions were subscribed to by the Attorney General, who was also one of the Law Officers of the Crown, and by other prominent jurists, the decisions were formally transmitted by the Foreign Office to the Embassy at Peking.²⁹

26. "Ibid". Lay to Hart. Jan. 8, 1862. "But things move here as slowly I think in many respects as they do in China."

27. "Vide antea" n. 18

28. Lay, "LR". Lay to FitzRoy. Jan. 9, 1862. For fuller discussion of legal question: Wright, "Tariff" pp. 216 ff.

29. FO 17/375. No. 176. Bruce to Russell. Dec. 2, 1862. Acknowledging receipt of Opinions.

The subsequent effect of these basic decisions, with some of their corollaries, was to strengthen immeasurably the position of the Inspectorate. (A year later, it was even further strengthened when the American Minister, Anson W. Burlingame, combined the decisions of his American predecessors with those of the British jurists to produce a statement of concurrence with the official British interpretation.³⁰)

Lay had, understandably, felt elated with the success of his efforts. There were other causes which made him feel somewhat buoyant during this period of his leave. One was the evaporation of the crisis, which had been precipitated by the Mason and Slidell (Trent) Affair, in Anglo-American relations.³¹ As the threat of war subsided, Captain Osborn was able to give qualified acceptance to Lay's tentative offer of the command of the proposed flotilla.³²

Another cause for his buoyancy was that on January 30, his wife had given birth to a daughter and both were doing well.³³ This was an encouraging development since their first child had not survived.

Some developments, however, were not so encouraging. Lay was still not in good health. Part of the delay in achieving more expeditious action from the Foreign Office and from the jurists had resulted from an illness of Lay's which had incapacitated him for more than a fortnight during the holiday season.

30. Morse, "Submission". p. 137 and his Appendix A. p.426. Burlingame to American Consuls. Peking, June 15, 1863.

31. Lay, "LR". Lay to Hart. Jan.8, 1862. "E/B". Russell was more cautious. He did not mention the passing of the danger to Bruce in a private letter until March 12.

32. Lay, "LR". Lay to Hart. Jan.8, 1862.

33. "Ibid" Lay to Osborn. Apr. 16, 1862.

Another development which unsettled Lay was the emergence of indications of conflict among the top-ranking British members of the Inspectorate.³⁴ Lay was himself partly to blame for this, even though the direct cause was the culmination of several unforeseen factors.

The root of the difficulty was that when Lay enticed H. Tudor Davies from his post as Chief Magistrate at Hongkong to take up the newly created post of Commissioner at Shanghai in 1859, he had made a verbal commitment to Davies that no one other than Lay among foreigners was to be his superior.³⁵ In a sense this established the precedent that the Shanghai Commissioner was to be considered the "second in command" among the foreign contingent. This was tacitly confirmed when, in taking his leave, Lay designated FitzRoy, acting as Davies' "locum tenens" at Shanghai, along with Hart, as joint Inspectors-General during his absence. The joint appointment was virtually an absolute necessity, for FitzRoy was without any proficiency in Chinese; as was Davies, for that matter. Lay's leave-taking action was subsequently confirmed in June 1861, through the Tsungli Yamen, but because of Hart's qualifications and the fact that he developed direct personal contact with Prince Kung and other senior members of the Tsungli Yamen, as well as with the high-ranking Ch'ing officials in the Treaty-port provinces, Hart's was the pre-eminent influence.³⁶

34. "Ibid". Lay to FitzRoy. Jan. 9, 1862 and to Hart. Jan. 10, 1862.

35. "Ibid". To Hart. Jan. 10.

36. "E/B" Bruce to Elgin. Private. July 8, 1861. For two interesting versions of Hart's influence in late 1861, cf. 1) FO 17/357 No. 85. Bruce to Russell. Oct. [?], 1861. Enclosure of despatch by Tsungli Yamen on Hart (part of this appeared in "NCH" No. 588, Nov. 2, 1861). 2) FO 17/370 No. 9 Bruce to Russell. Feb. 23, 1862. Enclos. No. 5, extracts of private letter from Hart to Wade.

Davies was supposed to return to Shanghai late in 1861, and Lay was anxious to have him do so because FitzRoy, having taken the brunt of the merchants' and Consuls' attacks, wished to return to Britain for a short leave. Davies, however, refused to return unless he were placed on at least an equal footing with Hart.³⁷ Since Lay had already decided to delay his own return until late Summer, 1862, and since it would have been folly to remove or "demote" Hart, apart from the fact that Hart held his commission directly from the Tsungli Yamen, Lay had no other recourse but to try to persuade Hart to accept Davies as his co-equal. Lay acknowledged that he was responsible for the situation. He praised Hart in sincere terms and made it clear that he would rather work out a pecuniary settlement of Davies' contract, which still had two and a half years to run, than to do anything that would cause Hart to leave the service. He nonetheless indicated his strong feeling that the status issue was one largely of form, and acceptance of Davies would in no way detract from Hart's pre-eminence or his influence.³⁸

An immediate crisis on the issue was avoided. Davies' father became seriously ill and this, coupled with the fact that his wife was reaching an advanced stage in pregnancy, forced Davies to postpone his departure even before a reply was received from Hart.³⁹

37. Lay, "LR". Lay to Hart. Jan.27, 1862.

38. Loc. cit.

39. Davies' father's illness dated from early January. The decision to postpone his departure for the reasons given is referred to in loc. cit.

In the meantime, also, FitzRoy had been prevailed upon by both Lay and Hart to remain in China through 1862. But Hart also made it clear to Lay, before learning of Davies' difficulties, that he was firmly opposed to a formal, technical arrangement that could give rise to a division of authority or responsibility.⁴⁰ Not only did he feel that whatever the form, he would be the one who would be held strictly accountable to the Tsungli Yamen, but also that an arrangement sanctioned thus far removed from the actual seat of power could not help but have an adverse affect on the smooth functioning of the executive. He did not absolutely refuse Lay's recommendation; but the very act of his procrastination was transparently a refusal, for his reply could not reach Lay before the end of June, by which time Lay should have been preparing to return to China to resume his office.

As an isolated sequence of events, the differences indicated might appear not to have had much importance. Additional differences that materialised as other sequences developed contributed to a pattern of unabated friction. This seemingly minor pattern was, however, partially interlaced in a pattern of much larger dimensions, the formation of a para-naval force. Since this project was one of major proportions, impinging upon many interests, it must be the centre of attention.

40. "FL,ms." Hart to Lay. n.d. (c. May, 1862). Two folded sheets are all that are extant, numbered successively "4" and "5". Hart is vigorous in stating that since he needed the direct authority from Prince Kung, he solicited his direct appointment. Having been given the authority, he was, in consequence, held solely responsible; therefore, he needed to retain complete authority! The letter, from specific reference, was written while Hart was collecting the first instalments for the flotilla at the more southerly ports - before he proceeded to Shanghai in late May or early June.

Yet the importance of the relationship between the principal architects - Hart and Lay - as a factor in determining the manner in which the project was promoted, should not be overlooked.

Whether or not Lay's initiatives in making enquiries about the feasibility of the flotilla project were stimulated by continuous encouragement from Hart is not certain. It is certain that Hart probably expressed a much more optimistic view of the prospects in November. In acknowledging Hart's 4th November, Lay wrote, "I suppose your first instalment of money for the Steamers will reach me by the second mail in May or first in June. I shall not give orders for more vessels at one time than I have money actually in hand to pay for."⁴¹

In his subsequent letters, Lay did not refer as specifically as this to any stimulus from Hart. Yet in almost every letter Lay sent to Hart, he alluded to some aspect of the scheme and as early as March 10, 1862, he was advising Hart of the formal authorisations that would be required from the authorities of China and Britain if the project were to be built up on a firm foundation.⁴² He had already presented a number of questions to his legal consultants and, more immediately, had arranged an interview with Lord Palmerston in order to discover what his attitude would be.⁴³

41. Lay, "LR". Lay to Hart. Jan.8, 1862.

42. Lay, "Interests". pp. 9-10. The reference to this letter in Lay "LR" is extremely brief - phrases very tersely strung together.

43. Lay, "LR". Lay to Hart. March 10, 1862. This is specifically noted in this source, but is not referred to in "Interests". Also referred to in Lay's letter of March 26, "vide" Appendix VI, A.

Under any circumstances such an approach would probably have been made, but Lay felt a particular concern at the time. Not only was he anticipating a parliamentary debate on China in which he felt certain the Inspectorate was to be attacked,⁴⁴ but Parkes, who had returned on leave, was one of the lions of the season and in public appearances was condemning the political and moral degeneracy of Ch'ing officialdom.⁴⁵

Lord Palmerston was evidently not affected by Parkes in the same way as Lay. On April 10, Lay was able to write to Hart, "Lord Palmerston would look well on our 'projet' I think".⁴⁶ This letter was sent off but a few days before a hastily composed note from Hart arrived, dated at Canton 27 February, with the information that on that day the Governor-General of the Liang Kuang, Lao Ch'ung-kuang, had received a directive from Peking to pay the first instalment of Canton's allotment for the fitting out of a flotilla to be acquired from Britain.⁴⁷

44. He had been anticipating the debate since early Jan. "Parliament is prorogued to the 6th February, Mr White late Silk Inspector at Shanghai, is I believe to head the attack on the customs". Lay, "LR". To Hart. Jan. 8, 1862. For the debate: Hansard's (Third Series) Vol. CLXVIII (1862) pp. 29-81.

45. "LCE" IV. Mar. 12, 1862. pp. 228-29. Parkes was given a hero's reception when he arrived at Dover on Feb. 27. As reported in "LCE" on Mar. 26, he was special guest, that month, of the Royal Geographical Society. He was awarded the K.C.B. in the May Honours' List.

46. Lay. "LR."

47. "Ibid". To Hart. Apr. 26, 1862. "Vide" Appendix VI, B. Lay had written to Osborn on Apr. 16 that the note arrived with "yesterday's " Marseilles Mail.

As Lay started giving more attention to the problems that would have to be dealt with in organising the flotilla, the lethargy of which he had complained in October and again at the end of January, gave way rapidly to a reactivation of his aggressive assertiveness. He had, also, made alterations in his personal plans in anticipation of the approval for the flotilla project, scheduling his departure from England for early 1863 instead of late summer, 1862.⁴⁸

While Hart's notice led Lay to alert Osborn to start his making inquiries respecting his release from his naval command,⁴⁹ Lay's actions did not take on an "official" colouring until, on April 28, he had in hand the first instalment remitted by Hart from Hongkong on March 14.⁵⁰ In addition to a covering letter for the bills of exchange, Hart wrote a somewhat lengthy and pompous despatch, in the best tradition of stilted officialese, instructing Lay as to the objectives for which the money was being sent. Accompanying this despatch was an equally lengthy memorandum, setting out in detail, descriptions of vessels, composition of personnel for each vessel, costs, etc.⁵¹

48. "Vide" App. VI A.

49. Lay, "LR". To Osborn. Apr, 16, 1862.

50. Hart sent off three letters under date of March 14. i) "No.3." "Separate" ("vide" Appendix VI, C.1) with "Memorandum" "Enclosure in No. 3 Separate". ("vide" Appendix VI, C.2): Copy of this located in "E/B" in Bruce's collection; ii) number 4, which presumably was the covering letter for the bills of exchange: copy not located; iii) "No.5". Copy not located, but acknowledged in Lay, "LR". Lay to Hart. May 9, 1862. (For major passages of Lay's letter, not included in "Interests" pp. 11-13, "vide" Appendix VI D.1).

51. "Vide" Appendix VI C1 and C2.

As these despatches reached Lay just after a mail for China had closed, he did not reply until a fortnight later,⁵² by which time he had had ample opportunity to formulate his views on questions raised by Hart.

At this juncture, it may be well to pause to consider, by way of a more pointed introduction, the pattern for the ensuing discussion of the project's development. The subject has been dealt with moderately comprehensively by the following: two Parliamentary Blue Books (1863 and 1864): H.N. Lay (1864 and 1868); H.B. Morse (1918); S.F. Wright (1938 and 1950); J.L. Rawlinson (1950)⁵³. A short and rather inconsequential monograph, based almost entirely on printed sources, was privately published by H.N. Lay's son-in-law, G.M. Spence - probably in 1937. Despite the intensive researches of Wright (sources in English) and Rawlinson (sources in Chinese), a considerable body of primary source material related to the project does not appear to have come to their attention. Some of this material is located among the more obscure holdings (e.g. Law Officers' reports, FO 17/Domestic Various, Miscellaneous Embassy and Consular files) of the Public Record Office.

52. i.e., May 9. Lay, "Interests" pp.11-13.

53. "BPP". i) (3057) "Correspondence respecting the employment under the Government of China of Officers in the Naval or Military Service of Her Majesty" (London, 1862). ii) (3271) "Correspondence respecting the Fitting out, dispatching to China and ultimate withdrawal, of the Anglo-Chinese Fleet under the command of Captain Sherard Osborn; and the Dismissal of Mr. Lay from the Chief Inspectorate of Customs". (London, 1864). Lay's, "Interests" and Lay, "F.O." and Lay, "F.O. Sup." Morse, "Submission". Wright, "Tariff" and "Hart". J.L. Rawlinson, "The Lay-Osborn Flotilla". Papers on China (Harvard Committee on Regional Studies), 1V (Apr. 1950). The merits and demerits of these sources will become apparent in the citations that follow.

Much of it was scattered in private holdings of the descendants of the Bruce and Lay families.⁵⁴ The quantity of this material, which provides detailed data for several of the significant aspects of the project is so voluminous that only a small, representative portion can be incorporated.

The quantity is a reflection of the complex of interests and influences that were crystallized by the project. Developing, as it did, in the extremely fluid settings of domestic conditions in both Britain and China and the equally fluid structure of international relations, the flotilla project, however briefly and however inconclusively, became a focal point for innumerable conflicts of interest. To deal exhaustively with the subject, therefore, would require at least one full-length volume. In the event, the discussion presented here will in effect consist of little more than an abstract. The purpose will still be to concentrate on Lay as the focal point and, beyond this, to seek to clarify the basic interest and influences that are discernible.

The conflict of influence was becoming apparent even before Lay received Hart's despatch of March 14. Lay did not begrudge Hart's initiative and youthful exuberance, but he was apt to be more sceptical about the motives and abilities of the new Regency that took over from the Regency set up on the Hsien-feng Emperor's death, by a "coup d'état" in the Fall of 1861.

54. The bulk of Lay's private papers was deliberately destroyed by Lay's youngest son, Frank Lay, when he and his family moved to smaller quarters while attempting to avoid the "Buzz-bombs" of W.W.II. Information from Mrs. Frank Lay during an interview with the author in 1957.

Lay intimated that he considered it desirable for the Inspector-General (I.G.) and, by extension, his "locum tenens", to spend as much time as possible at Peking, where he could exercise a direct and continuous influence on the central organ of government.⁵⁵ In a later, rather candid exposition of his conception of the position of the I.G., Lay wrote "... as the P'oong yew [朋友] and confidential adviser of the Prince, he is by courtesy entitled to equal respect & consideration with the Highest officers in the Empire."⁵⁶ In other comments, he indicated that he felt Hart did not have a proper appreciation of the I.G.'s role and, in consequence, was in danger of detracting from the influence of the office. Lay's constant theme was his concern with the necessity to develop and strengthen the structure of central authority.

Lay's early comments were not so much critical as they were pedagogical. He did not query Hart's dedication to the "large ideas" of rejuvenating and enlightening the Ch'ing metropolitan executive, but Hart's reports suggested that, in his pursuit of on-the-spot solutions to pressing local problems which he encountered in the course of his visits to the Treaty Ports, he was losing sight of the "large ideas".

Lay also had occasion to take exception to another of Hart's tendencies; a somewhat unrealistic optimism with respect to fiscal matters.

55. Lay, "LR". Lay to Hart. Jan.8, 1862 - referred to twice.

56."Ibid". March 26, 1862.

As an example, in converting taels to pounds sterling, Hart employed the nominal exchange rate of 3:1.⁵⁷ To make matters worse, he asserted (probably in haste) that the total of 600,000 tls. authorized to be collected from "various" ports would realize £250,000! Lay pointed out that the real rate in Shanghai was normally about 3.3:1, while taels used for exchange at Canton and Hongkong were frequently quoted as dearly as 4:1.⁵⁸ In this respect, Lay was not immune from excessive pessimism. In reporting to Osborn the amount initially approved, Lay specified that the 600,000 tls. would realize £150,000!⁵⁹ However, for such difficulties, Lay's solution was simple. He urged Hart to try to collect 1,000,000 tls., and suggested that even this might not be enough.⁶⁰

One other potential for conflict was manifest in the formative period of the project. Lay had already written Hart - at about the same time that Hart received news of the approval of the project - that he expected to be given the fullest powers of discretion in organising the flotilla.⁶¹ But it was to Osborn that he expressed his basic conception of its character and function.

I should like our vessels to be the finest and best equipped afloat! We'll do the thing thoroughly well or not at all. I hear you say, "Yes, certainly." I hope you & I together will do more than any treaties can effect, to open China next year.⁶²

57. "Vide" Appendix VI C1 and C2.

58. "Vide" Appendix VI B. The evidence that amounts fixed in pounds sterling were either converted at the market rate or at the nominal rate of 3:1 plus compensation of as much as 10% is so common that individual citations are unnecessary.

59. Lay, "LR". To Osborn. Apr. 16, 1862.

60. "Vide" Appendix VI B.

61. Lay, "Interests". p.9.

62. Lay, "LR". To Osborn. Apr. 16, 1862.

With this background, Hart's "official despatch" of March 14 brought into sharper relief the principal areas of conflict.⁶³ Hart assumed the mantle of authority, not only in terms of presuming to designate Lay as his agent, but also of investing himself with the Imperial authority, though he himself had not, in fact, received any formal instrument from the executive of that authority. Although part of his preamble was phrased in general terms, the terms of reference for "the construction of a Steam fleet" were extremely narrow and the elaboration embodied in his memorandum imposed the kind of limitations which would have been antithetical to the fulfillment of the long-term "large ideas" that were supposed to be shared by the executive of the Foreign Inspectorate.

While the memorandum had all the appearance of system and careful detail, Hart's presentation was unsound in principle and deficient and inaccurate in computation.⁶⁴ Explicitly and implicitly, both in the despatch and the memorandum, it was anticipated that the vessels would be procured on a piecemeal basis, and allocated, as they arrived, in the first instance under the provincial jurisdiction - pursuing activities appropriate to the immediate needs of that jurisdiction.

63. "Vide" Appendix VI, C1.

64. "Vide" Appendix VI, C2. Commentary is required here, for hitherto there has been considerable confusion on what Hart supplied Lay. The confusion arises because two purported memos of Hart's are at issue. There is a "memo" in BPP (3271) which was included in the papers presented by the Ch'ing officials on Oct. 25, 1863, which it was alleged Hart had prepared as the basis of Ch'ing approval for the scheme. It is undated and precedes a document dated Feb. 1, 1862. The tendency has been to assume that it was the memo referred to as the enclosure in the March 14 letter. The discovery of the March 14 documents clears up the problem for this period. For the identification of the document in BPP (3271) "vide ~~part~~ Chapter X, pp. 403-05. The documents were received at the Embassy in Peking in the order in which they appear in the Blue Book. FO 250/78 No. 59 Kung to Bruce. 25/10/63 with enclosures.

Though not stipulated, the inference that must be drawn is, that relays of vessels would be operating in Chinese waters, while the commander-in-chief waited in London for receipt of the successive instalments which would enable him to complete his flotilla!

Insofar as computations were concerned, it was patently obvious on the basis of Hart's own figures that for the implementation of his own "scheme", it would require a minimum of 400,000 tls. over and above the 600,000 tls. he had been authorised to collect from official sources. In fairness to Hart, however, it may be said that he did believe that he could count on a minimum of an additional 200,000 tls. from non-official sources, but in view of political and economic conditions in China at the time, this was optimism indeed. Moreover, Hart's calculations did not allow for a whole range of essential expenses; e.g., advance funds to pay the salaries and wages of the skeletal crews required to take the vessels to China; reserve stores; insurance; etc.

Lay's long reply of May 9,⁶⁵ which was on the whole even-tempered, analytical and explanatory, did not allude to all these matters.

65. Lay, "LR". To Hart. May 9, 1863. Major portions not printed in Lay, "Interests" are reproduced in Appendix VI, D.1.

He concentrated on six principal points: Hart's inversion of their positions; the uselessness of Hart's "authorisation" as a legal instrument;⁶⁶ the absolute necessity for Lay to be provided with a legal instrument sent directly from the executive Imperial authority sufficient to enable him to exercise "full powers";⁶⁷ the need to leave decisions concerning technical and organizational matters in the hands of Osborn - subject to concurrence with Lay; a brief outline of Lay's basic conception of the character of the flotilla; a request that bills of exchange for the remittances be negotiable on sight - bills sent, as with the first remittance, negotiable "at six months sight" in London would have to be heavily discounted were contracts, etc., to be expeditiously arranged.

Lay, in actuality, omitted any specific reference to the contents of Hart's memorandum, except to acknowledge its receipt. It was almost as though he considered it, because of its glaring deficiencies, irrelevant even though Hart specified that its contents had formed the basis for his proposals to the "Chinese" authorities.

66. Lay, "Interests", pp. 10-11. In his "No. 3" of March 14, Hart stated that he had not yet seen the official authorisation, but in one of the other letters of March 14, Lay, "Interests", p.14, Lay quotes Hart as having received a personal despatch from Kung. This must have been the communication of Feb. 1, "vide" BPP (3271). There was, however, another communication from Kung to Hart of Feb. 20, whose contents in translation, Hart does not appear to have transmitted to Lay. The Embassy at Peking had a copy of this, but did not transmit it to England as part of the documentation for the flotilla project. FO 228/341 (Commissariat & Naval to 1863). This is reproduced as Appendix VIII, A.

67. In Lay, "LR", the "legal" draft Lay composed was not recorded until he had copied his letter to Hart of May 23/26. However, in "Interests", p.13, he asserts it was enclosed in his letter of May 9.

One critical aspect of Hart's scheme, not referred to above nor even noted by Lay in any of his general references, was the provision for a "Chinese" contingent for each vessel substantially larger than the "European" contingent, all the officers, however, to be "Europeans". The implications of this provision with respect to the character of the force and to the financing of the project were singularly ignored.

Between May 9 and 26, Lay received two further letters - as distinct from "official despatches" - from Hart. In the first, realising perhaps the impracticability of some of his calculations, he informed Lay that seven vessels, rather than ten, was a more realistic number to be acquired in view of the funds available and that he was committed to only the smaller number.⁶⁸ In the second, Hart reported news from Wade that Bruce had requested " ' the admiral (Sir James Hope) to assist them in choosing steamers of which to make war vessels' so we will have Mr. Bruce's support."⁶⁹ Hart also assured Lay that he could get as much money as he wanted and enjoined Lay to expedite the project.

As most of Lay's time had been occupied in concluding discussions on legal questions dealing with customs matters, he had not given much attention to the flotilla project.

68. Lay, "LR". Lay to Hart. May 23, 1862. With "PS" for May 26, "vide" Appendix VI, E.

69. In Lay, "LR", Lay records receipt of Hart's "of the 6th April" under a postscript of May 26. The quotations, not in "LR", are given in Lay, "Interests", p.14, where the date is given as "5th of April". There is a question as to whether Lay quoted Hart out of context or whether Hart misunderstood his information from Wade, "vide" FO 17/370 No. 9. Bruce to Russell. Feb. 23, 1862. Also "vide" *postscripta*, pp.355-56.

In his letter to Hart,⁷⁰ he made a rough calculation of the minimum amount that would be required in London. His principal news item was added as a postscript; viz. that Osborn was at hand, having obtained his release from his command in the Royal Navy.

At this point, a survey of background developments in China, having reference to the flotilla project might be in order. This transition affords an opportunity to recall, with added emphasis, the prevailing conditions respecting communication between the two areas. A distinction, in this regard, should be made between "news" and "correspondence". "Stop Press" news in either direction would be "up-to-date" within limits of from five to seven weeks - depending on where the news originated on the China coast and on whether the events occurred in time to be carried by steamers to the "eastern" terminus of the telegraphic network. (There was a much more rapid overland service across the extended Russian Empire, but use of its facilities was narrowly restricted. The E. Asia - N. America elapsed-time pattern was slightly different, but since it did not have a bearing on the issues, the special problems are also omitted from this discussion). Detailed news normally followed six to nine weeks after the events.

However, for exchanges of correspondence, i.e., responses to queries or provocative commentary, the "circle" was still normally not completed in under fifteen weeks and it might, even "normally", take as long as twenty-two weeks to complete.

70. "Vide" Appendix VI E.

In the present context, for example, Hart (from Shanghai) acknowledged the reply (Lay's May 9) to his despatch of March 14 on July 13, representing a "circle" of approximately seventeen weeks. In turn, Lay acknowledged Hart's July 13, being the latter's reply to Lay's May 9, on October 10 (indicating that it had probably arrived about Sept. 25/26⁷¹), a "circle" of approximately twenty weeks. The significance of this in relation to the flotilla project is fairly clear: there could not be, under the best circumstances, both consultations to reach consensus on terms of reference and expeditious acquisition of a flotilla.

The survey that now follows will show that the lack of consensus was much greater than that displayed in the Hart-Lay exchanges examined thus far. These developments belie, in some measure, Hart's claim, disputed by Lay on different grounds,⁷² that he was the author of the flotilla scheme. Hart based his claim on discussions which he had with Prince Kung and other members of the Tsungli Yamen during the early summer and fall of 1861, whereas some six months previously, the concept of the project had been discussed among Ch'ing officialdom as a result of French and Russian offers of assistance to quell the Taiping Rebellion.⁷³

71. Lay, "LR". To Hart, Oct. 10, 1862. In this letter, Lay acknowledged one of Aug. 2. It has been assumed that the letters arrived in normal sequence, viz., second September mail - July 13; first October mail - Aug. 2. Here again there is a discrepancy in letter-dating: in Lay, "LR" the date given is "15th July"; in "Interests", p.15, the date is specified as "13th July".

72. "Vide" Appendix VI, E.

73. For the discussions see Rawlinson, op.cit. pp. 63-64 and "Swisher", op.cit. pp. 689-698. Both sources use "IWSM" exclusively. This author has checked all the entries in "IWSM" pertaining to the flotilla. Swisher, of course, terminated his study at early 1861. Rawlinson's *précis* translations are, with one serious exception (to be noted later), reliable. His dating, however, is invariably at least one day out, sometimes two or three days out and in one instance as much as sixty days out. His "IWSM" "chuan" and page citations are frequently inaccurate.

In fact, in January, 1861, the central administration had received from Tseng Kuo-fan a set of suggestions⁷⁴ respecting the acquisition of a flotilla which, in basic outline, closely approximated in conception, organisation and plan of proposed operation the project which the central administration ultimately averred it had authorised. Though Tseng could, at this early stage, condone such a project, on his terms, he was not an ardent supporter for its adoption. Be that as it may, Kung and his colleagues were prepared at this early stage to sanction Hsuëh Huan at Shanghai to "collect funds from the customs receipts of the various ports and take action [to acquire foreign-officered warships] immediately."⁷⁵ Nothing came of this suggestion, quite probably because provincial officials had already expressed opposition to acceptance of any foreign assistance and because conservative (atavistic) views were the dominant ones at the Hsien-feng Court, still in exile at Jehol.

In the "positive" Ch'ing approach antedating Hart's initiative, then, there is nothing corresponding to "large ideas". The attitude is typical of the period. In the face of resurgence of rebellious activities, almost any expedient was worth considering, especially if it might also serve to nullify the aggressive and energetic behaviour of the "barbarians".

74. Swisher, op.cit. pp.689-692 from "IWSM". HF 71:9b, 4-12,8. Memorial. Recorded Jan. 5, 1861. Rawlinson, op.cit. pp.62-63, covers this period but his dates, citations and authors are muddled.

75. Swisher, op.cit. p.698 from "IWSM". HF 72:7, 10-7b,4. Kung and others' memorial. Recorded Jan 24, 1861. Rawlinson appears to have overlooked this early, firm recommendation.

But the expedient proposed, to be intelligible, had to be circumscribed by being made to conform to the traditional system of value and authority. In other words, to be acceptable, it had in principle and in fact to be subject to the discretion of the provincial officials, through direct control of personnel and financing and, as a military proposal, it was implicitly a short-term expedient.

During this early period, Wade and Bruce were promoting the concomitants of "large ideas" without, of course, spelling out those ideas - except in private or confidential correspondence with friends or sympathetic compatriot officials.⁷⁶ They concentrated on the central administration, meaning in this period, Prince Kung and Wensiang, with the object of enhancing and expanding the base of centralised responsibility and authority. Alluding to what were, to them, but rumours of the French and Russian offers, they warned the officials of the dangers of accepting this form of "assistance" and instead urged the adoption of a programme of self-help - advantageous as a permanent measure as well as of a short-term expedient; of employing Europeans from non-treaty powers to organise and train modernised, centrally controlled, corps of native levies. As they were exerting themselves in this direction, they were also extolling the advantages of the Foreign Inspectorate system, delicately but insistently.⁷⁷

76. For private correspondence: "E/B/. Wade to Elgin. Private, July 23, 1861; Bruce to Elgin. Private, Aug. 6 and 20, Sept. 24, Oct. 10, 1861, and Apr. 10 and 20, 1862. P.R.O. 30/22/49. Bruce to Russell, Private, Feb. 24, 1862.

77. Details from correspondence cited in n.76.

It should be noted that in pressing these points, Wade and Bruce were making an independent British policy. In one general sense, perhaps, they were substantiating the British credo of having no other interest than fulfilling the Treaty provisions for regularised diplomatic and commercial intercourse. But in the more specific sense, they created an active rôle for themselves by attempting to ensure that the Ch'ing government would adopt policies which would enable it, in the long-run, to meet its obligations under the treaties. Wade and Bruce did not have specific policy directives from the Government at home,⁷⁸ because, except for indulgence in platitudes, that conglomeration of "Whigs" was incapable of crystallising specific policy directives for Chinese affairs. Moreover, the British community in China provided no foundation on which to base constructive policies. Consuls, merchants, missionaries, and military were all at odds amongst themselves and frequently with each other as to proper policies to be pursued. The nearest concensus was to be found, in the period, among consuls and merchants opposed to the extension of the authority and jurisdiction of the Foreign Inspectorate - directly opposed, in consequence, to the heart of Wade's and Bruce's diplomatic initiative.

78. "E/B" Bruce to Elgin. Private letters passim to June 8, 1862. In this last, he commented "[HMG] agents here are left to reconcile contradictory instructions, and to abide by decisions Govt. may adopt when enlightened as to the line it will be most popular to take." His letter to Lady Augusta Bruce, June 7, 1862, was even more despondent. Commencing with letters and despatches received from mid-June, Bruce at least had the consolation that his policies were being "warmly" approved.

Lacking, as it were, the "legal" sanction for their diplomacy and the conditions which would permit them to "educate" opinion, the content of much of their diplomatic initiative was for many months at a time buried in the "circles" of official and private despatches.

From the foregoing, it becomes apparent that well before Hart's appearance at Peking, concepts and policies were taking shape that could be expected to condition the reception and, during the course of his discussions with the Ch'ing officials and Wade and Bruce, the formulation of the proposals he presented. It is well to keep in mind also some other aspects of Hart's position. He was in 1861 still a very young man - but 26 years old - and although Lay was not many years his senior, the difference in outlook and attitudes was comparable to the difference of a whole generation of "China Hands". Hart, besides, was an Irishman, not an Englishman.⁷⁹ This is not to impugn his loyalty as a British subject, as was done by a vicious critic a few years later,⁸⁰ but it is material to suggest that it affected, in juxtaposition to Lay, his interpretation of his responsibilities. Finally, while Lay could claim, as he frequently did, that he had been forced into the Ch'ing Emperor's Service, Hart's entry was by deliberate choice.

Hart had already established his credentials in the British Service and as a lieutenant of Lay's in the Inspectorate, successively.

79. Lay was only 29, but had been in China seven years longer than Hart. On Hart's Irish ancestry, "vide" Wright, "Hart," p.173

80. J. von Gumpach, "The Burlingame Mission" (London, 1872). The entire volume is a diatribe against Hart, which includes the charge that Hart had Fenian connections.

Having been merely "recommended" by Lay, as he considered it, to act jointly with FitzRoy as Inspectors-General during Lay's leave, he appeared to be determined to establish his own credentials with the central administration by insisting on, and succeeding in, extracting a formal decree stipulating the joint appointment. This was conceded to him very shortly after his arrival in Peking;⁸¹ a mark of the rapidity with which he made a favourable impression on Kung and Wensiang.

In the two series of discussions which he had in the summer and fall (the first probably interrupted by the Hsien-feng Emperor's death in August and the second by the "coup" in November, plus an unwillingness to be caught in Peking in the winter), Hart concentrated on the problems related to gaining further support for the Inspectorate as an agency of the central administration. His most effective arguments were the records of customs receipts and most of his suggestions centred on the question of their value as revenue-producers. His recommendation on the acquisition of a "customs" flotilla was part of this pattern.

Without verbatim reports of the discussions, it is impossible to tell whether or not the Ch'ing officials appraised Hart of their own views on the subject. Having probed Hart, the officials again solicited Tseng Kuo-fen's views, particularly as to the value of employing a flotilla against the Taipings.

81. "CMC" I, Extracts from "Circular No. 25 of 1869" (First Series) Inspectorate General of Customs. In full in Morse's "Subjection" as second part of Morse's Appendix D. Hart was being referred to as "Inspector-General" in "IWSM" HF 78 (June 1861), but his designation thereafter varied, sometimes omitting qualification and sometimes including qualifiers as "joint", "Temporary", etc.

Tseng's reply was more enthusiastic with respect to the acquisition of steamers, not because he felt they could be used on inland waterways, where they could be of little value, but because he felt that, in time, they could be used against the foreigners!⁸² To the extent that information is available, the officials' interest revolved around questions of time, personnel and cost. On all these questions Hart expressed himself optimistically and prepared a draft estimate of the costs for ten or more small steamers, apparently based on an expected appropriation of 800,000 tls.⁸³

Although the "official" Hart subsequently sent to Lay did restrict the specific terms of reference to suppression of piracy, smuggling and bandits, Hart may have been employing shrewd tactics. In the first place, "bandit" could be translated by the Chinese ideograph (or a compound) used in the language to identify rebels, or "banditti". In the second place, by getting a commitment recognising the flotilla as pre-eminently a "customs" force, Hart may have been endeavouring to secure its acceptance as a permanent force. If the commitment were to be a force related to military expediency, however, its permanency might not be too secure. Whether it was intended or not, there was an ambiguity in Hart's definition of the flotilla. At the same time, there was no ambiguity in the Tsungli Yamen's official notification of February 1, 1862, to Hart.⁸⁴

82. Rawlinson, op.cit. p.64.

83. "Ibid". p.63. Also, Kung to Hart, Feb.1, 1862. "vide antea" n.66.

84. "Ibid". Kung to Hart citation.

The appropriation was for vessels to be used - without qualification - to help suppress the rebellion.

It is to be realised that Hart's discussion covered a wide range of subjects. Customs problems simply received priority of attention for immediate decisions. This was particularly so as copies of the Chambers of Commerce Memorials as well as an endless stream of merchants' and Consuls' complaints were reaching Peking. Hart's presence was thus also useful to Bruce. It is interesting that Hart's memorandum on the Chambers' complaints⁸⁵ produced for Bruce was as broad and as scathing in its condemnation and counter-complaints as was that produced by Lay. Bruce, however, in forwarding the memorandum to the F.O. was careful to see that the despatch was not only marked "Secret and Confidential", but he also wrote:

I trust the document will not be made public. It accounts in some measure for the unpopularity of the Custom House; as such frauds would not be taken notice of by the Chinese Officials.⁸⁶

Hart fully reported his discussions with the Ch'ing officials to Bruce and Wade and, on the evidence, to Lay.⁸⁷ By the time, of course, that Lay's reactions reached him, Hart had been absent from Peking for three to four months. "Absent", perhaps, should be qualified, since the Inspectorate's headquarters was still at Shanghai, which afforded greater accessibility than did Peking to most of the newly opened Customs Houses.

85. FO 17/357, No 91. Bruce to Russell. Dec. 23, 1861. Enclosing Hart's memo.

86. "Ibid". Bruce to Russell.

87. "E/B". Bruce to Elgin. Private. July 8, 1861.

Thirdly, a transfer of power (to speak of an incipient polarisation of a new form of regional power would be premature) was being rapidly effected in the lower Yangtze valley, bringing to the fore a group of energetic, Chinese neo-conservatives led by Tseng Kuo-fan and Li Hung-chang.⁹¹

The fourth development might more properly be included as a supplement to British diplomacy at Peking, but it is important enough to be treated separately. Within the time span covered by this survey, Frederick Bruce's attitude and outlook towards his functions underwent a gradual but decided change, a change, that is, which was a reassertion of his basic disposition. The traumatic experiences of 1858, 1859, and 1860, had forced him to stand unequivocally with those who contended that only dictation backed by coercive military force would succeed in bringing Ch'ing officialdom to the acceptance of the benefits to be offered by diplomacy and trade.⁹² Having survived the traumatic experiences of these years and been sustained, despite them, as British Minister, resident in the rarefied, slowly-paced and relatively culturally refined atmosphere of Peking, he reverted to the even-tempered (some have said indolent⁹³) rationalism which by early influences and training,⁹⁴ was more conducive to his temperament.

91. Theme is developed by Wright, "Restoration"; S.Spector, "Li Hung-chang and the Huai Army" (Seattle, Wash., 1964). J.C. Cheng, "Chinese Sources for the Taiping Rebellion, 1850-1864" (Hongkong, 1963) adds much useful data on the period.

92. FO 17/339. Bruce to Alston. Private. Dec. 31, 1860.

93. Lane-Poole, op.cit. I p. 442. Other critics have been less polite. A more sympathetic view of this characteristic may be found in Lord Redesdale, "Memories" (London, 1915) Vol. I. p.330.

94. Bruce spent many of his early years in post-Napoleonic Paris. The record of his background is in the "E/B" private collection.

In the process of adjusting to his new physical environment which, except for a few diversions it offered, he detested,⁹⁵ he convinced himself, for the time being, at least, that to achieve the objects in view - reciprocating diplomacy, expanding commerce and "progress" - dictation and military coercion must give place to persuasion and example.⁹⁶ Bruce professed to see in the Confucian tradition, as he generally became familiar with it, a value system built upon those very same cardinal virtues of non-violent coercion.⁹⁷

Like many rationalist statesmen and diplomats forced to carry burdens of individual responsibility in the public service, Bruce was torn between making decisions consistent with his lofty ideas and those that were expedient to resolve immediate problems, whether or not the expedients were consistent with the ideas. His correspondence of the period, individually and consecutively, is replete with internal contradictions and inconsistencies characteristic of the never-ending struggle. Thus, in all good faith, he could give his unofficial support to the long-term concept embodied in Hart's flotilla scheme⁹⁸ and yet, when consulted by the Ch'ing officials, because of the intensification of rebel depredations,

95. "E/B" Bruce's private letters to Elgin and Lady Augusta Bruce, 1862-63, passim. He began his plaintive cries in Jan. 1862, to Elgin. One of his strongest statements, to Elgin, Sept. 24, 1862, "I am well - tho' sick of the country - of its monotony & anxieties".

96. "E/B" Bruce to Elgin. Private. Nov. 10, 1861, is one of Bruce's most forceful statements. For earliest indication of changed attitude see letter of March 14, 1861.

97. P.R.O. 30/22/49. Bruce to Russell. Private, Feb. 24, 1862.

98. He elaborated this aspect of his support, ex post facto. "E/B" Bruce to Russell (Originally addressed to Hammond). Private and confidential. Apr. 12, 1864.

he could also urge on the Tsungli Yamen the immediate purchase of steamers from along the China coast⁹⁹ or from the U.S.¹⁰⁰ Given the state of Ch'ing finances, the latter proposal, if implemented, could have no other effect than to sabotage the flotilla project.

The illustration may appear tangential, but it is not quite so. The vital point is that Bruce, in re-adopting what was fundamentally a passive posture in relation to long-term objectives was endangering, in his day-to-day decisions, the realisation of those objectives.

Before resuming the account of Lay's activities in London, a summary characterisation of the interests and influences just surveyed may be useful. The classification, for the early period, may be limited to the initial "sponsors" of the flotilla project, - the Ch'ing officials, Hart and, for ease of treatment, Bruce, - since the project did not become a matter of public knowledge until later.

Among Ch'ing officials who could be counted as sponsors, there was a fair degree of agreement on a number of points. It was taken for granted that the flotilla, or a part thereof, on arrival in China would come under provincial responsibility and its activities would be controlled by the authority of the Governors-General or Governors within whose jurisdiction it operated.

99. "Vide antea" n. 69. In this despatch, Bruce was supporting the immediate acquisition of "war steamers", on the coast, if possible. See esp. encl. No. 8. Bruce to Adm. Sir J. Hope, Feb. 22, 1862.

100. "E/B" Hart to Lay. "No. 6." Separate Series. June 12, 1862. "Vide" Appendix VI J.

Delegation of some discretionary control to European personnel was not excluded, but it was assumed that at an early date most of the personnel would be drawn from native levies who would be under the direct command of native officers. It was also taken for granted that the flotilla would be subject to the same considerations as applied to other military forces within the traditional system; i.e. questions of numbers, distribution, permanency, etc., would be determined by short-term utilitarian factors rather than by long-term institutional factors.

The above points of agreement were virtually inflexible conditions. On two other points, there was divergence of viewpoints - though not disagreement - which permitted an element of flexibility. Kung and Wensiang wanted the vessels to be sent out as quickly as possible. Other officials who expressed themselves, appear to have been relatively indifferent on this issue. On the point of expenditure, the first appropriation was charged against maritime customs receipts which, except for surreptitious practices, were not at the disposal of provincial treasuries, hence the issue of subsequent appropriations was not immediate. But complaints were already being raised about the shortage of funds for existing military needs, to which were added resentful comments about the high-cost of military operations "à la barbarian"

There was some area of unresolved disagreement. Kung and Wensiang thought almost exclusively in terms of operations against rebellion along the coast and, inland along the Yangtze. On the one hand, Tseng openly disputed the views of Kung and Wensiang and opposed the use of the flotilla for this purpose. On the other hand, other provincial

officials were being "sold" the scheme by Hart with the inducement that contributing provinces would be receiving vessels to suppress piracy and smuggling - the purpose of which was, if only indirectly, to benefit the provincial treasuries.

These were the most obvious aspects of consensus and divergence. More subtle aspects associated with new power configurations, involving shifts of interest and influence, were beginning to emerge.

The nature of Hart's interests and influence was ambiguous. Apart from a normal desire to make a good impression on his superiors, he was not inordinately ambitious. But his enthusiasm and energy impeded his ability to think through the implications of his precipitous commitments and actions. He did not sort out the interests he was seeking to promote and, consequently, had no real order of priorities. By over-extending himself in promoting a multiplicity of competing interests and in giving personal attention to, literally and figuratively, a host of widespread problems, Hart was diluting the force of his interests and influence. By the middle of 1862, he was approaching the position of promising all things to all men - exclusive, of course, of pirates, smugglers and "bandits".

Bruce had had, and continued to afford himself, ample time to define the general structure of interests, including his own personal interests, related to his position. At the same time, he would have preferred to remain aloof from the arduous and profitless decision-making responsibilities attached to the position. He generally refused to acknowledge the

specifics of any problem until it was thrust directly upon him.¹⁰¹ He could act forcefully when he had at his side someone who could rationalise an obvious decision for him. When confronted by alternatives, each of which could be rationalised, he was wont to procrastinate until the "force of events" eliminated all but one choice. This analysis of his behaviour patterns, possibly over-generalised, seems to be warranted by the evidence. This pattern underlies the ambivalence of his responses to critical problems.

The survey and summary, limited as they must be, nonetheless illustrate the introductory point that the disparity in concensus on the flotilla project was much more comprehensive than that evidenced in the early Hart-Lay exchanges. It is now time to take up the further developments in Britain, where the flotilla was actually being formed.

101. "E/B" Bruce to Lady Augusta Bruce. Jan. 7, 1861. There is also a rather striking statement along similar lines in Bredon, op.cit. pp.66-67, in which, allegedly, Hart quotes Bruce verbatim. Hart was still alive when Bredon's biography was published.

Chapter X

Servant as Master in His Own Home 1862

Captain Sherard Osborn's arrival in London was the "signal" for the official launching of the project in Britain. On May 29, 1862 Lay, on behalf of the Chinese government, retained Osborn on a five-month basis to "devote his time and attention to the promotion of a European Chinese Force".¹ The written understanding also contained the provision that from November: "a fresh arrangement [shall] be made between Mr. Osborn and Mr. Lay."

Osborn and Lay had made their acquaintance during Elgin's Mission of 1857-59. During the campaign and negotiations of 1858, and the six-week expedition up the Yangtze at the end of the year, they had worked in close association with each other. Osborn had returned to England in 1859 to undergo medical treatment and, incidentally, to add to his already notable literary reputation, articles for Blackwood's and a book on Chinese affairs.² He was noted as an adventurous, bold, dashing "maverick", feared and resented by the staid members of his profession, admired by the kindred spirits and invariably idolised by the men who served directly under him.

1. Lay "LR". Drawn up by Sherard Osborn, countersigned by Lay. May 29, 1862. Recorded in "LR" after an entry for June 16.

2. "The Past and Future of British Relations in China" (Edinburgh, 1860) Published by Blackwood and Sons, the book contains several of the "Blackwood's" articles. Further characteristics of Osborn, "vide" LCE IV July 26, 1862. p. 532.

After his recovery, he had again taken to sea in command of H.M.S. "Donegal", doing a tour of duty in waters off the Mexican coast, where Lay's first "feelers" of 1861 reached him. The ship had returned to England for re-assignment at the end of the year, when Lay's firmer offers were made, first to form, and then to command, the flotilla.³ He had acquired his release from the Admiralty and paid off his ship, for which he was compensated by Lay.⁴

The quasi-official understanding stipulated one significant point and implied three others. It clearly identified the force to be formed as "European Chinese". It showed that Lay and Osborn, accepting Hart's promise to provide between £200,000 - £250,000 in four months (signifying receipt of the total in London by the end of August, 1862 at the latest), expected the flotilla to be ready to sail early in November;⁵ that Osborn was directly responsible to Lay only; that Lay was not prepared to assume authority to make official Imperial appointments until such time as he had received the legal sanction to do so, which sanction, by conservative calculation, he might have expected not later than mid-October (allowing five months, or about twenty-two weeks, from the date of his request to Hart).

3. Lay, "LR". To Hart. Oct. 26, 1861. Whether Hart or Lay was the first to recommend Osborn is uncertain. Lay, certainly, thought of him from the outset.

4. Per understanding of May 29. "Vide ante", n.l.

5. Additional confirmation of expected Nov.1, sailing date. FO 17/384. Lay to Russell. Private, Aug. 18, 1862. The Ch'ing officials were, of course, expecting the vessels to arrive in the "first months" of 1863. "Vide", Rawlinson, op.cit. p. 69, quoting from Hsüeh Huan.

The understanding drawn up, Lay and Osborn appear to have spent the following fortnight setting up an office as a "Chinese Government Agency", reaching mutual agreement on concepts and objectives and initiating informal inquiries on legal and organisational questions. Lay prepared a memorandum on June 13, 1862 embodying the results of such of their discussions as was relevant to an approach to H.M. Government.⁶ Their activities, however, received some attention within the Government even before Lay forwarded his first official request on June 16, enclosing a copy of the memo whose first definitive point was:

.... to obtain the sanction of H.M. Government, in order that officers and men, British subjects, may be at liberty to take employment under the Chinese Government.

The Duke of Somerset, First Lord of the Admiralty, addressed the following note to Lord Russell on June 15:

Is there any truth in a report that the Chinese Government are desirous of organising a force of gunboats under a British Naval officer?

From some words of Captain Sherard Osborn it seemed to me that some communication on this subject had been made to him. My opinion is, that, if it would not excite the jealousy of other powers, it would be an excellent plan, and one which you should encourage. A small force of gunboats maintained by the Chinese government, would repress piracy in those seas, secure our trade in Yangtze river, and keep down the Taepings.

We could sell to the Chinese government some of the gun-boats now at Hongkong and our expenditure would be reduced, as some portion of our force on the Chinese coasts could then be dispensed with.

I intended to have spoken to you yesterday on this matter, but had no opportunity in the midst of other business.

6. Lay, "LR" "Memordandum". June 13, 1862. Transmitted with covering letter of June 16, 1862, to FO. FO 17/382.

7. Loc. cit.

8. PRO. 30/22/24. News that Osborn was making preparations to form a flotilla was first carried in the press in "LCE". IV. June 10, 1862. p.430.

Somerset's reasons for support all appear in Lay's memo. In addition, the memo specified as an object, "c. To explore the interior and promote foreign commerce by the introduction under Chinese auspices of Telegraphic & Steam Communication."⁹ It included as reasons why the project ought to "recommend itself to H.M. Govt.", the following:¹⁰

It will make it impossible for the Chinese Govt. to return to a retrograde policy, even if so disposed.

It will ensure wholesome reforms in the administration of the Govt. throughout the Empire.

The preamble to the memo opens, "The Chinese Govt. deeply impressed with the necessity of a European naval force..." This reference clearly suggests that Lay and Osborn intended that the "nucleus" of the modern force to be created for China should be exclusively European. There were several practical considerations that probably led to this decision. The force had been approved, it was reasonable to believe, on the premise that "European" naval technology and experience were more advanced than anything China could provide from its own resources. The best method to vindicate this assumption would be to provide a prototype model in personnel as well as in "matériel". More concretely, the force was expected to be ready for combat immediately it arrived in China. If it were to be an efficient and effective instrument, its operations ought not to be impeded by the need to train raw "recruits", to provide qualified linguists, etc.

9. Lay, "LR". "Memo". June, 13.

10. Loc. cit. It may be noted that the printed version in BPP (3057) did not contain these passages. They had been omitted on the express request of Osborn (on Lay's absence). FO 17/383. Osborn to Layard. July 29, 1862.

The sanction appeared to be, and of course, Lay intended it to be, for a permanent force. This being the case, the fusion of native contingents with the force as it expanded could be carried out as favourable conditions permitted.¹¹

Lay's covering letter to Lord Russell was phrased as though Government approval for the project was a foregone conclusion. In it, he also listed three conditions that "would be necessary, in order to enable me to take action in regard to it"; repeal of Bowring's Neutrality Ordinance of 1854 (sic); permission for leave of absence to naval officers wishing to join the force; notification of Government sanction to British Civil and Naval authorities in China.¹² These were conditions which Lay had crystallised some time previously;¹³ but for all his forethought he had not made sufficient allowances for the idiosyncracies of politicians and bureaucrats.

However, before following that trail, one other feature of Lay's opening presentation deserves notice. The memo and letter taken together leave no doubt that in this phase of the project "European" was taken to mean British. There was no qualification as to where the vessels, equipment or men were to be acquired; no reference to the fact that other nations were being, or were to be, asked to participate.

11. Eventually confirmed. "Vide", "Times". Jan. 6, 1863, p.9c. Report from "Army and Navy Gazette".

12. Lay, "LR". Lay to Russell. June 16, 1862.

13. "Ibid". Lay to Hart. March 10, 26, Apr. 26 and May 9, 1862.

Lay had earlier written to both Osborn and Hart that he would have to approach France, but he considered it, at the time, to be a necessary formal gesture.¹⁴

Here again, there is no documentary evidence to explain the decisions obviously taken by Lay and Osborn. But the practical considerations mentioned above, augmented by political factors, do offer an acceptable explanation. If speedy organisation and immediately efficient and effective operation were top priorities, these would suffer from any attempt to develop a multi-national force at the start. Politically, suspicion between Britain and France had been growing since 1859, as Louis Napoleon's policy of territorial aggrandisement unfolded. The War Between the States, also for political reasons, eliminated the United States from consideration as an immediate participant.¹⁵ An explanation for the exclusion of Russia would have to be based entirely on conjecture, so this part of the question must be left unresolved.

The reasons for proceeding to organise a nucleic force, exclusively British in character, did not rest on ulterior, imperialistic motives.¹⁶

14. "Ibid". Lay to Osborn, Apr. 16, 1862, and to Hart Apr. 26.

15. The difficulties were real. At just this time the U.S. Minister Burlingame was investigating the sympathies of one of the Inspectorate's Commissioners, with a view to insisting on his dismissal if reports of his Confederate leanings were confirmed. "CMC" VII pp.44-45. Citing "Records of the U.S. Dept. of State. Despatches, China, vol.XX. Despatch No. 17, 18th May 1862: Anson Burlingame to the Secretary of State."

16. "E/B" Russell to Bruce. Private, Apr. 26 (1862). Referring to a joint military policy with France to control Taipings, Russell notes it cannot be done "without taking China out of the hands of its Govt. - a change perhaps much to the benefit of China, but likely to ruin England. India with its 130. million is quite as much as we can manage."

On the same basis that the force could, under favourable conditions, be developed into a "European Chinese" force, the European contingent could be developed into a multi-national contingent.¹⁷

The inter-departmental correspondence touched off by Lay and stimulated periodically by further letters from him, which covers the period from mid-June to early September, makes intriguing reading. Only the critical issues and decisions, however, can be discussed here. The delay in the proceedings was not the result of reluctance to approve the project, for this was given by the beginning of July. The delay was in satisfying, beyond question, the legal position. To attain this, many departments had to be consulted (Cabinet, Foreign Office, Admiralty, Colonial Office, Home Office, Law Officers and "Council"), the correct procedure in the light of operative legislation had to be clarified, unforeseen complexities resolved, and some members of the Government, who were reluctant to take certain types of action while Parliament was still in session, had to be placated.¹⁸

The Admiralty and the Foreign Office, with the assistance of the Colonial Office, cleared the ground fairly quickly in reply to Lay's letter.¹⁹

17. When it was necessary to clarify the issue, Lay and Osborn did so. In the commentary to their 13-clause agreement of Jan. 16, 1863 ("vide" BPP (3271), to balance the initial, exclusively British character of the force, Lay was to "submit to the European representatives" orders from the "ruler of China" which appeared to be "at variance with law or justice".

18. Such an occasion did arise when a motion for papers was made in the House of Lords on July 28. For the debate "vide" Hansard's (Third Series) CIXVIII(1862) pp.882-899.

19. The clearance was achieved between June 17 and July 3. "Vide" FO 17/382 and 383.

The reasons for the Admiralty's support of the idea of a European Chinese force has been recorded. Russell and Layard at the F.O. supported the "general" idea for more complex reasons. As recently as June 2,²⁰ Russell had received a lengthy despatch from Bruce reporting favourably on the new spirit motivating some of the members of the new administration and also reporting that Kung had agreed to act on Bruce's recommendation that Kung purchase "small steamers which can operate on the rivers and along the lines of water communication". Russell, who had long been convinced about the totally destructive attitude of the Taipings, was also anxious to promote any policy that would protect and expand the China trade. As he wrote privately to Bruce at the end of June:²¹

Our trade with China is now of vast importance - all the more as the U.S. by their quarrel have deprived us of so much of our most valuable importations.

The clearance that was achieved by the earliest exchanges, however, had come too easily. Lay himself realised this when he received Layard's letter advising that if he and Osborn would forward official applications, the F.O. would send these on to the Home Office with a recommendation that the Queen's licence (under the Foreign Enlistment Act) be issued to them.²²

20. FO 17/370. Receipt of No. 9. Bruce to Russell, Feb. 23, 1862. This was one of the despatches advocating aid to China on a "self help" basis. These passages were heavily lined in the margin and at end Russell noted: "Approve. Entirely concur with Mr. Bruce."

21. "E/B" Russell to Bruce. Private, June 26, 1862.

22. Lay, "LR". Layard to Lay. July 3, 1862. This letter was not printed with the papers in BPP (3057). It is copied in "LR" after Lay's entry for July 17.

In fact, Lay and Osborn had not been explicit enough about their plans and the F.O. and Admiralty had misunderstood the nature of the project. They had simply assumed that Lay and Osborn would return to China and under the direct authority of the Emperor of China and within his territorial jurisdiction, organise the flotilla.

After some unofficial enquiries, Lay submitted a second letter amplifying his opening presentations.²³ He and Osborn applied, he wrote, for a Queen's licence: to enable them "to accept naval & military service in the employ of the Chinese Government; to fit out & equip vessels for warlike purposes in China; and to enlist British subjects to serve in naval and military operations in China". This was, indeed, all-inclusive with but one limitation: the enlistment of British subjects! But the F.O. was undaunted (possibly because the Permanent Under-Secretary, E. Hammond, was away on holiday²⁴), and forwarded Lay's letter to the Home Office.²⁵ The events of the following week forced the Government to make a thorough appraisal of the project and to review its China policy.

The process, on the Government side, was given direction apparently by the Home Secretary, Sir G. Grey, referring the subject of Lay's letter to a Cabinet meeting of July 19.²⁶

23. Lay, "LR". Lay to Russell. July 9, 1862. The unofficial inquiry had been addressed to Layard on about July 5. In the interim, July 8-9, Osborn had got his official permission from the Admiralty. FO 17/383.

24. M.A. Anderson, "Edmund Hammond, Permanent Under-Secretary of State for Foreign Affairs, 1854-1873". Unpubl. Ph.D. Thesis (London, 1956).

25. FO 83/2251 "Law Officers Reports: China 1860-1864". Layard to Waddington. July 10, 1862.

26. "Vide ~~par~~lea" p.369, n.28.

Two questions appear to have been debated: a) whether Britain's official policy of neutrality could be considered unchanged were sanction to be given to the creation of a force of such magnitude in Britain: b) whether under any circumstances a Queen's licence could be issued under the Foreign Enlistment Act (which, it seemed, need not be publicised) to cover more than one individual or whether an Order in Council (which would be gazetted) would be required.

The F.O. had anticipated the discussions in the Cabinet and had requested an opinion from the Law Officers on the personnel question.²⁷ Their reply was at hand on the Monday (July 21) following the Cabinet meeting, giving their opinion that for Lay's specific request either a Proclamation or an Order in Council, preferably the latter, would be required, otherwise individual licences would be necessary. It added that applications for a large number of licences might be awkward.

Consequently, for the information of the F.O., Russell noted on the same day:

It was the opinion of the Cabinet on Saty last that a licence should be applied for in each individual case.

If an order in Council should ^{be} required, it must be authorised at the Council for the Prorogation.²⁸

27. FO 83/2251. Layard to Law Officers. July 15, 1862. Reply received: Sir Wm. Atherton and Roundell Palmer to Russell.

28. FO 17/383. Written on Law Officers' reply of July 21.

And, for the information of Bruce, Russell wrote privately, in time for the late July mail:

The question of how we are to aid the Chinese in putting down the Taipings is becoming a serious one. The Cabinet approve of Capt. Sherard Osborne's having leave to go to China, & he may then serve the Chinese Govt. But the Cabinet do not approve of his (Capt O's) enlisting men in this country to serve the Emperor of China. So no Order in Council on this subject will be issued. When Capt. Osborne is in China he may do what he can to get good crews to his gunboats.²⁹

Just the day previously, July 25, the F.O. had received an official reply to Lay's application from the H.O. advising that it had no objection to issuing Queen's licences to Lay and Osborn. It added, however, that additional needs for armed vessels and power to enlist could only be granted via an Order in Council.³⁰

Yet neither the Admiralty nor the Foreign Office had capitulated. In what must have been a rare burst of initiative, coupled with its customary doggedness, the Admiralty with the approval of the F.O.³¹ had begun discussions with Lay and Osborn respecting the "purchase...[of] such vessels and stores as can be spared from H.M. Dockyard."³²

29. "E/B" July 26, 1862.

30. FO 17/383. Sir E. Clive to Layard.

31. "Ibid". Layard to Adm. "Immediate". July 18, 1862. Adm. to Layard. July 19, 1862. Layard to Lay. July 19, 1862.

32. Lay, "LR". Lay addressed one letter to Somerset, July 17, which he enclosed in a letter to Layard of the same date. The quote is from the covering letter to Layard.

Further, in a debate on a motion in the Lords for the correspondence dealing with requests to enter the naval or military service of the Emperor of China, Somerset smartly supported and defended the flotilla scheme, obscuring the fact, of course, that the Admiralty was in the process of circumventing the Cabinet's decision.³³ Finally, on August 2, the Admiralty requested the F.O. to inform Lay about some of the specific vessels, with purchase price, that it was prepared to sell.³⁴

In the meantime, on July 30, the F.O. replied to the H.O. letter of July 25. It took the position that Government policy and the Law Officers' opinion had decided against including a blanket authority to enlist men under a Queen's licence. The matter of fitting out and equipping armed vessels was not at issue and it, therefore, requested that licences be drawn up for Lay and Osborn to include this and an authority to Osborn to select "such other officers", as he might need.³⁵

At the same time, Russell continued to seek some way around the requirement for individual licences for the men to be recruited. He inquired of the Colonial Office on August 8, "whether Mr. Lay would be allowed to engage sailors of merchantmen in Hong Kong".³⁶ An unofficial legal opinion was submitted by the C.O. that Lay would still require some authority to enlist men.

33. "Videa antea" n.18. Somerset's remarks appear on pp. 887-893.

34. FO 17/384. Adm. to Hammond. It may have been a reflection of Hammond's influence, but Lay was not officially advised until Aug. 12.

35. FO 17/402. Layard to Clive. July 30, 1862. There is no satisfactory reason to explain why this letter was filed and bound with documents for 1863.

36. FO 17/384. FO to Col. Off. Aug. 8, 1862.

It suggested that Lay could enlist men, with impunity, at Canton - always providing the individuals had permission!³⁷ Russell grabbed at a straw and countered with the inquiry as to whether the C.O. could and would suspend the Hongkong Neutrality Ordinance if Lay "opened" in Canton.³⁸ Obviously the C.O. would not, for it referred all the F.O. questions to the Law Officers.³⁹ But by this time, the F.O. had itself again approached the Law Officers to find out if there was any other method, aside from Proclamation or Order-in-Council "to get by" the personnel and vessels problem and finally put the question in the proper perspective by asking whether it would be practical to issue 600 individual licences.⁴⁰ An immediate answer was forthcoming: individual licences were required.⁴¹

The extent to which Lay and Osborn were informed of the difficulties is not certain. These two were making frequent personal visits to the F.O., the H.O. and the Admiralty. Whatever information they acquired in no way deterred them from proceeding with their arrangements.

37. "Ibid". Col. Off. to FO. Aug. 12, 1862.

38. "Ibid". FO. to Col. Off. Aug. 13, 1862.

39. "Ibid". Col. Off. to FO. Aug. 23, 1862.

40. FO 83/2251. Layard to Dr. R. Phillimore. Aug. 11, 1862.

41. "Ibid". Phillimore to Layard. Aug. 12, 1862.

They had enlisted, in the non-legal sense, some naval officers to assist them. They had contracted for the construction of three vessels.⁴² When they were notified that the H.O. intended to issue them each a personal licence restricted to service in a military or naval capacity,⁴³ Lay addressed a caustic reply directly to the H.O. on August 11, citing the printed letter of Layard's of 30 July, and as much as demanded that the sanction "to fit out and equip" be inserted in the licences.⁴⁴

Furthermore, having finally been notified⁴⁵ of the Admiralty's offer of vessels, and proposing to take immediate possession of those selected, in order quickly to have them reconditioned and armed for service, they forwarded designs for a "national" flag and naval ensign to be gazetted.⁴⁶ This was required to exempt the vessels from port dues, customs duties on equipment, etc. Thus, the pressures for a prompt and clearcut decision mounted. They were brought to a critical level between August 17 - 20.

42. Lay was to claim on Aug. 18, that he lacked the authority "to purchase" any, but he was indulging in his favourite past-time of hair-splitting. "Vide ~~postea~~" n.48 and n.58.

43. No written evidence as to how Lay and Osborn were notified. That they were notified is stated by Lay in his letter to Sir G. Grey of Aug. 11, 1862 - copy of which was enclosed in Lay to Russell "Official". Aug. 18, 1862. "Vide" FO 17/384.

44. Loc. cit. Lay was trying to force a decision. He himself professed to know in July (Lay, "LR". Lay to Hart, July 23, 1862, "vide" Appendix VI F) that an "Order in Council" would be required. The earlier documents (BPP[3057]) which may have provoked his onslaught, were released on Aug. 10. "Vide", "Times". Aug. 11, 1862. p.7f.

45. "Vide antea" n.34.

46. The Chinese Empire did not possess a "national" flag or standard ensign. "Vide ~~postea~~" p.375. Also 17/384. Lay and Osborn to FO. Aug. 13, 1862.

On the first day, Lay received an official notice from the Home Office that it could only issue personal licences to him and Osborn. For the sanction "to fit out and equip vessels", he would have to refer back to the F.O.⁴⁷ The same day he had a long session with Layard. The following day (August 18) he addressed two letters directly to Russell. One was an official letter in which he enclosed copies of his 11 August letter to Sir George Grey and the Home Office reply of August 16. In his covering letter,⁴⁸ Lay briefly reviewed the statement on the problem of "to fit out and equip vessels." He asserted that the exclusion of this authority in the licence made the vessels "liable to seizure and confiscation." He stated that he was not concerned about the enlistment question for he felt he could overcome this obstacle by recruiting the force and then submitting one roster for the entire force, whereupon individual licences could be issued. He continued, "Although I have Your Lordship's authority to equip vessels, I am unable to do so, unless the conditions of the Act of Parliament are complied with." He concluded with the request that Russell exert his influence to have the subject clause inserted in the licences to himself and Osborn.

The other letter to Russell was marked "Private".⁴⁹

47. FO 17/384. Lay to Russell "Official". Aug. 18, 1862. Enclosure No.2. Waddington to Lay. Aug. 16, 1862.

48. "Ibid" "Official"

49. "Ibid" Lay to Russell. Private. Aug. 18, 1862.

After recalling that he, Lay, had addressed Russell "on the 5th Instant,"⁵⁰ and I have taken the liberty of again trespassing on your time in a letter of this date,....", he reviewed the vessels problem in essentially the same terms as stated in the official letter. However, the closing paragraphs were as follows:

Until the proper authority is granted me, I am unable to purchase any vessels, although this is of pressing urgency, as in order to enable the force to reach China in April next, it must be despatched from this country in the first week of November.

May I, therefore, pray that your Lordship will have the kindness to give my letters referred to [,] your consideration, and favour me with an answer at Your Lordship's earliest convenience.

Lay's two letters stimulated Russell to take up the outstanding issues on August 19 and 20. His and Layard's hand-written notes on Lay's letters of August 13 and 18 ("Private") are quite revealing and, in consequence, warrant extensive reproduction here.

[Russell, 19/8 on Lay's of 13/8] Is this the Chinese flag? Being in the service of the Emperor they ought to carry the Chinese flag with some mark of distinction.

[Layard, for same] Mr. Lay informed me two days ago [17 August] that the Chinese Govt had no flag.

Mr. Lay's great object is to make his force "respectable" as he terms it. Hence his flag.

It is for this reason that Mr. Lay objects strongly to engaging men at Canton or Hong Kong. He means to do great things and he wants a respectable force engaged in this country to assist him. He has no fancy for the rowdies to be picked up at the Chinese Ports. It follows that no Colonial Ordinance or Proclamation would suit Mr. Lay. The alternative would be an Order in Council suspending the foreign Enlistment Act. But the necessity of this is obviated in Mr. Lay's letter of the 18th, and it is therefore hoped that on that head there will be no further difficulty.

Shall we notify Mr. Lay's flag to the Admiralty?

50. No copy of this letter was found. It may also have been "Private" and in this instance not deposited by Russell .

[Russell] I think he cannot carry the flag without the permission of the Emperor of China. Ask for this thro' Mr. Bruce.⁵¹

Two sets of notes were made on Lay's "Private" of August 18, differentiated as indicated.

[Russell, 19/8 on the Cover] An official answer must be given to this as soon as an Order-in-Council is decided upon.

[Layard memorandum dated 19/8 attached; extracts;] I have seen Mr. Waddington [Permanent Under-Secretary at the Home Office] on this and he informed me it was done by order of Sir G. Grey who had stated that it had been decided in Cabinet....

I pointed out to Mr. Waddington that in our letter of July 30 we had requested that Licences might be issued authorizing Mr. Lay and Capt Osborne "to fit out & equip vessels" as well as to enter the Chinese service themselves, but Mr. W - said the meeting of the Cabinet was since that date [sic] and at all events he had Sir G. Grey's orders in writing which were clear & precise. If therefore Lord Russell wished the licence to include leave to "fit out & equip vessels", His Lordship must address a further Commun to Sir G. Grey.

Mr. Lay's letter is so far satisfactory that it seems to show that he will not experience any difficulty about engaging men, which was for a long time our chief embarrassment.

[Russell on memo, 20/8] This is a question for Ld Palmerston or the Cabinet.⁵²

Lay continued his unremitting pressure by requesting additional sanction to purchase "Guns, small arms, ammunition, etc. as may be necessary...." from the War Department, "upon the same terms as such supplies are now furnished to the Chinese Military service, through Vice Admiral Hope and Brigadier Staveley [viz., at 50 per cent. of cost!]"⁵³

51. "Ibid" Notes on Lay/Osborn to FO Aug. 13. Notice was sent to Admiralty on Aug. 28, and request to Bruce on Sept. 3, 1862; i.e., only after the decision to approve an Order in Council was taken.

52. "Ibid" Notes on Lay to Russell. "Private". Aug. 18.

53. "Ibid" Lay to Russell. Aug. 21, 1862. Request not transmitted until Sept. 3. "Vide" FO 17/385.

Russell, however, had had all the pressure he needed. He gave his entire attention, with respect to Chinese affairs, to gaining approval for an Order in Council.

A dossier was compiled in the F.O. and this was forwarded to Dr. R. Phillimore, one of the Law Officers, on August 25 with a request to draw up a draft Order in Council that would satisfy the requirements of the situation.⁵⁴ Exactly when the decision was made is not on record in the F.O. files. Russell wrote privately to Bruce:

Lord Palmerston has agreed to a proposal of mine [!] that an Order in Council should be issued granting to Capt. Sherard Osborne & Mr. Lay the license [sic] of the Crown to equip ships, & hire men for the service of the Emperor of China.⁵⁵

The draft Order in Council submitted on August 26 by Phillimore was excessively restrictive and was accompanied by the following comment:⁵⁶

2. I have concluded from the statements contained in both communications from the Foreign Office [Aug. 11 & 25?] that it was not the intention of HMG to grant, as in 1835, an unqualified licence to all British Subjects to enlist themselves in the service of a Foreign State, but to grant a qualified licence to enlist themselves in such service only under the command of Mr. Lay and Captain Osborne.

When the draft was transmitted to the "Council" Office for engrossment, Russell attached a memorandum to it⁵⁷ which began, "The representations of Mr. Lay & the state of the law, as explained by the Law Officers of the Crown have made it necessary to reconsider our position in reference to China & the Taeping insurrection".

54. FO 83/2251.

55. "E/B" Russell to Bruce. Private. Aug. 26, 1862.

56. FO 83/2251. Phillimore to Layard. Aug. 26, 1862.

57. FO 17/384. Russell memo. Aug. 27, 1862.

Stating that the Government had decided to grant leave to "Osborn and some other officers to enter the service of the Emperor of China", he went on to explain why alternative procedures were unsuitable. He concluded:

If however an Order in Council is obtained Capt. Osborn and Mr. Lay expect to organise a force by which our Trade may be protected both against the Taepings & against pirates.

On these grounds I have, with the concurrence of Lord Palmerston, advised that Her Majesty should sanction the Order in Council required.

At this stage, Lay's unremitting pressure very nearly disrupted the entire proceedings. He repeated his request, with more urgency on August 28, for gazetting the Imperial flags, etc. He detailed the reasons it was required, noting, "I see no reason to apprehend any difficulty in obtaining the formal consent of the Emperor to the flag proposed." And, then, "Lastly, I have already purchased five vessels."⁵⁸ This letter brought the direct intercession of Hammond, who attached a memorandum to Lay's letter before passing it on to Russell.⁵⁹

58.FO 17/384. Lay to Russell. "Vide antea" n. 42. Lay, of course, had no more legal authority on Aug. 28 than he had had on Aug. 18 to "purchase" vessels, though by this time he may have learned that an Order in Council was being processed. But the "Times", Aug. 20, p.9c reported the purchase from the Admiralty of two vessels and in Lay, "LR". Lay to Hart, Aug. 24, 1862 ("vide" Appendix VI, G), Lay confirms that three vessels were being constructed and two had been purchased.

59. FO 17/384. Memo on Lay to Russell by Hammond same date. Hammond at the same time wrote to Admiralty (Aug. 28) about the flag question. The Admiralty replied to Hammond on Aug. 29 that the flag would be respected, but could not be gazetted until approved by Emperor.

Expressing his own amazement that the Chinese Government possessed no flag "in their seas by which their vessels can be known," he nonetheless conceded the need for some recognition and accordingly "directed a letter to be written to the Admiralty". However, Hammond was not finished.

But there is another question of importance. We have nothing officially of Mr. Lay. He says that he is the Agent of the Chinese Govt. Should we not ask him for his authority to act? He should surely produce it before we go any further. I cannot make out that Bruce has mentioned him to us as the Agent of the Chinese Govt. in this country.

Russell's notation immediately followed.

The flag should be adopted or authorised by the Emperor of China before we recognise it.

Mr. Lay is well known as an officer of the Chinese Officer [sic]. He ought to be asked for his documents empowering him to act here. I thought he had produced them.⁶⁰

The procedures, nevertheless, had gone too far to stop them going any further. On August 29, Phillimore, now joined by Sir W. Atherton, the Attorney-Solicitor General, had forwarded a revised draft of the Order in Council with a report to the "Council" office (copies sent to F.O.⁶¹) "referring to queries made about the draft...." The report stated:

That we have settled the Draft Order in Council, and have appended our initials thereto. It did not seem to us practicable to include in the Order any provision regulating or restricting the conditions of service after enlistment.⁶² At the same time, regard being had to the

60. Loc.cit. Memo dated Aug. 28.

61. FO 83/2251. Law Officers to Privy Council Office. Aug. 29, 1862.

62. Atherton was probably more familiar with Lay's plans as he had been one of the consultants on legal questions discussed earlier. The more open phraseology may reflect the intent to keep enlistment open for "European" officers instead of British officers only. "Vide antea" p.377, n.56.

very peculiar nature of the service, we would venture to suggest that it might be expedient that some regulations and restrictions should form the subject of communications or of an understanding in this respect between the Govt. & Mr. Lay and Captain Osborn. As an illustration of our meaning we would point out the expediency of care being taken to guard against such of Her Majesty's Subjects as may enlist being placed under the immediate command of Chinese officers, or being mixed up with the general forces of the Emperor.

The necessity for this suggestion appears to us to arise from a consideration of the barbarous manner in which hostilities have been, & in all probability will be, carried on to a greater or less extent by the forces of the Emperor of China.⁶³

The formalised Order in Council was transmitted to the F.O. on August 30,⁶⁴ The order to gazette it was sent out on September 1, and it was gazetted the following day.⁶⁵ This released the backlog of pending matters, many of which were, in effect, dealt with ex post facto. The only two that are of primary interest concern the "understanding" that the Government endeavoured to reach with Lay and Osborn and the question of Lay's authority.

When the Order in Council had been gazetted, Layard raised the question of the revisions and report of the Law Officers.⁶⁶ Russell replied, "I think we should write to the Adm^{ty} to propose that Capt Osborn should make it an engagement that men enlisted should only serve under British Officers". Following the usual initial "R", he added, "Say same to Mr. Lay."⁶⁷

63. FO 83/2251. Law Officers to Privy Council Office, Aug. 29.

64. FO 17/384. Privy Council Office to Foreign Office.

65. FO 17/385. FO memo. Sept. 1, 1862.

66. "Ibid" Layard's memo, Sept. 2, 1862.

67. Loc. cit. Russell did not date his memo, but the letter to the Admiralty went out on Sept. 2.

The Admiralty was informed and was also asked to offer "any further suggestions... for the proper regulation of this service;" before the F.O. communicated with Lay and Osborn.⁶⁸ In reply, the Admiralty asked to know what terms of engagement Lay proposed to make under the Order in Council.⁶⁹

The F.O.'s reply, dated October 11, referring specifically to the Admiralty's letter (dated 4 September), simply forwarded a letter of Lay's of October 7 purportedly setting out his written authority from the Chinese Government!⁷⁰ Most of the delay was occasioned by the absence of Lay on holiday in "Germany", where he had gone to take a "course" of the Schwalbach Waters.⁷¹

Whatever Lay's letter contained,⁷² it could not have been his written Authority from the Chinese government. But, in the first instance, it is important to note that the issue of "terms of engagement" was, apparently, suspended. For the purpose of fitting out and arming vessels, Lay had tangible authority: as of the date of his letter, almost £120,000 of it.⁷³

68. FO 17/385. Layard to Adm. Sept. 2, 1862.

69. "Ibid" Adm. to Layard. Sept. 4, 1862. The FO did not write to Lay until Sept. 10. Copy in FO 228/319. No. 144 Hammond to Bruce.

70. "Ibid". FO to Adm. Oct. 11, 1862.

71. Lay, "LR", Lay to Hart. Oct. 10, 1862. ("vide" Appendix VI H.)

72. There is no copy of Lay's letter of Oct. 7 in the FO 17/- files. It may have been forwarded to the Admiralty without a copy being made.

73. "Vide" Appendix VI, H.

He had already compromised his avowed position that he would not order "a bolt that I have not funds in hand to pay for";⁷⁴ but to take risks where the ground was not irretrievable (i.e., disposability of property) was one thing; to enter into personal contracts (never mind what the British Government might do!) without the authority he had requested - "making contracts & arrangements with [men for the service] upon such terms & conditions, in all respects, as you shall think fit:"⁷⁵ was quite another thing. Lay may have given sufficient assurances, verbally or in a private note, to Russell to satisfy him that the thing would be done properly before the force would be permitted to leave Britain. In any case, the large-scale enlistment of men had not yet begun and did not appear to be imminent. At least, nothing further was written on the subject until Lay did have a written authority from the Chinese government.⁷⁶

The nature of the authority that Lay did submit, in the second instance, is for the time, only open to speculation. The only thing Lay could possibly have submitted was a copy of the terms and conditions which he had specified to Hart that he required, along with the positive assurance he had from Hart, "So soon as I can get to Peking, I shall procure for you the 'full Powers' you require, to enable you to carry out the steam fleet project..."⁷⁷

74. Lay, "LR". Lay to Osborn. Apr. 16, 1862. Also "vide antea", Chapter IX 2333. n.41.

75. "Vide" Appendix VI, D.2.

76. "Times" Jan. 6, 1863, p.9c. The London correspondent of the "China Mail", "A.W." picked up the report on Jan. 10, which appeared in No.941, Feb. 26, 1863, p.34.

77. Lay, "Interests", p.15.

Except for the transmission of Lay's list of arms needs (which included a request for the new Armstrong guns, that Russell assumed the War Department would not supply)⁷⁸ and a request, which was ultimately refused, to have three specialist soldiers "lent" from the Royal Corps of Engineers,⁷⁹ the flotilla project received no other attention in the London Office domestic files⁸⁰ until the end of November. When it was mentioned, it was primarily in conjunction with responses to developments in China and not as a result of any initiative originating in Britain. Consequently, after a brief discussion of some significant aspects of the events just presented, it will be appropriate to follow the account through the transitional exchanges of correspondence between Britain and China.

Two of the significant aspects to which attention might be called are obvious. Firstly, Lay and Osborn were implementing the project by concentrating on forming a first class, efficient flotilla. Slowness of remittance, and exchange and discount costs aside, they were carrying out their responsibilities under the most advantageous financial terms to the Imperial government and as rapidly as circumstances would permit.

78. "Vide antea", n.53. FO 17/385. Lay to Russell. Oct. 21, 1862. Transmitted to War Office Oct. 24, 1862. Gregory, op.cit. pp. 208-09. citing FO 17/376 shows that Russell was recommending that obsolete equipment be supplied in the anti-Taiping campaigns. Lay and Osborn, however, were not to be put off. "Vide" "Times", March 5, 1863, p.14b. They could not get the Armstrong gun for the vessels, but they did get new Enfield rifles for their marines.

79. FO 17/385. Lay and Osborn to Russell. Oct. 14, 1862. Sent to W.O. Oct. 15. "Vide ~~antea~~" p.385, n.83 and 84.

80. FO 17/375, No. 170. Russell to Bruce. Nov. 26, 1862, made a very general reference to British officers who, in addition to those defending the 30-mile radius, would be assisting to put down piracy. Neither Osborn nor the flotilla was specifically mentioned.

It seems, nonetheless, that they would probably only have met their first-week-in-November sailing date at a considerable increment in cost.⁸¹ As it was, their operations were at least slowed by the two months' delay in acquiring all the necessary legal sanctions. Also, although they had received in early October but slightly more than half the minimum they had been promised for late August,⁸² this had not, to that point, entailed any serious delay in proceeding with the project.

Secondly, in part because of the insistence of Lay and Osborn on adhering to their terms of reference for the flotilla project, the British Government was forced into a two-fold policy decision. One side of the decision was primarily a personalised, executive decision. Palmerston and Russell combined to provide full legal (if not political) sanction for the flotilla project. The other side of the decision was, in reality, a joint decision of the F.O., Admiralty and War Office, the Ministries most aware of and sensitive to the rebellion in China. Nominally, of course, the same two men assumed responsibility, but each of the Ministries in its actions with respect to the flotilla project was accelerating a shift in policy to a less-than-neutral position in the conflict.

81. "Vide" Appendix VI H.

82. "Vide antea", p.36/.

There were, however, limits that could not be exceeded and it was Hammond again, who tried to hold the breach. The War Office reply, delayed for almost a month,⁸³ to the request for "three soldiers", which had been forwarded by the F.O. without any comment, approved the request on condition that the "Chinese Agency" paid all costs. The reply, according to practice, went to the F.O. On the War Office letter Hammond wrote, "Do we not in some respects make ourselves allies in this war by allowing our soldiers to serve, even though paid by the Chinese Gov^t?" Russell was forced despite the anomaly to concur: "Yes - I think we must decline to allow it."⁸⁴ Letters of refusal were sent to the War Office and to Lay and Osborn.⁸⁵ "Neutrality" was still, thus, the official and publicised policy, but the cooperation that was being given in developing the project was driving a rather large wedge into a rather large crack.

One significant aspect is not so obvious. It is the apposite of the discussion in Chapter VII, where it was argued that the dual role played by Lay while he was active in China, placed him in an enigmatic position.

83. "Vide antea", n.79. FO 17/385. W.O. to FO Nov. 12, 1862.

84. Loc. cit. Hammond and Russell notes are undated. Ironically, within two weeks, the FO was desperately trying to find a means to legitimise the "fait accompli" of British "soldiers" engaged in the Emperor's service in China. The decision also was somewhat incongruous, since Lay and Osborn had the authority to enlist whomever they wished - naval or military, officers or "men".

85. FO 17/385. Replies dated Nov. 22, 1862.

In China he was attempting to defend the rights and promote the interests of China. He was attempting to do these as an unacknowledged instrument of a British policy of "large", ephemeral ideas, (un)supported by an ineffectual "British" influence against a perpetual tide of unmanageable foreigners, most of whom were British. And this effort was being engineered in a Ch'ing structure built on a fractionalised executive and on unstable authority.

In Britain, and especially in the framework of events surrounding the flotilla project, Lay was being extricated from his enigmatic position. The passive voice is essentially correct, for many of the influences and interests that were at work were beyond the range of Lay's control. The events of June-October added the remaining two ingredients to the "large idea" formula. More important than the "digging in" of the Embassy at Peking were the quasi-political/quasi-legal and material support of the Government in London. The hard-headed politicians unquestionably calculated their interests in pounds, shillings and pence,⁸⁶ but these interests had been transmuted into commitment. The Sino-European mutual benefit concept was solidly backed by formal Government support.

86. Some intimations of this have already been given. In addition note FO 17/383. Admiralty notice of July 12, 1862 "to Chinese Volunteers" - promotions in Chinese service not valid in Royal Navy; no pensions for wounds, or if killed in action for widows of men who had been on half-pay - yet these were men who would be replacing regular British forces on the China Station. Ordnance was to be supplied at "half-price", but payment for sales in England was guaranteed, whereas much of what was "sold" directly in China was never paid for. Other illustrations of the "£.s.d." theme will be noted below.

The second ingredient completed the synarchic executive.⁸⁷ To the modern, civil administration of the Inspectorate and to the security of a dependable revenue was fused an integrated naval force "cum" coast guard. This triumvirate was not to be a weapon: it was to be a vital, regenerative transfusion. For Lay, it was the clearing away of enigmas. The Master was a harlequin of "Progress". The hope, optimism and self-confidence of the Fall of 1862 that replaced the pessimism, despair and insecurity of the Spring of 1861, was not just the result of the Schwalbach Waters. The rejuvenation may all have been based on a chimera, but the outlook was one of being on the threshold of fulfillment.

The exchanges between Lay and Hart may have cast a few shadows across the landscape. Had Lay seen the diplomatic correspondence, in addition to the newspaper accounts, he might have detected some ominous storm clouds directly overhead as well as on the horizon. With this cryptic introduction the account of the exchanges between Britain and China may begin.

The correspondence contributes more in the way of negative evidence than in the way of evidence that adds to greater knowledge of the flotilla project. The several factors that account for this will be considered as the different groupings are examined.

After the end of May, Lay's definitive letters to Hart were much less frequent than they had been.

87. Esp. FO 17/374. No. 141. Bruce to Russell. Oct. 13, 1862.

His own Letter Register contains no record of his having sent any letter between May 26 and July 23⁸⁸ and then there is only the one for July and one at the end of August.⁸⁹ It is possible, however, that he did send copies of his memoranda and of his correspondence with Government Ministers (the more important are copied in the Letter Register) and it is quite probable that short notes accompanied the official receipts he religiously provided as remittances arrived from China. The last comprehensive letter recorded is under the date of October 10, 1862 - to catch the first mail after his September holiday on the Continent.⁹⁰ The last entry of a letter to Hart is recorded as a short note of October 27.

Though Lay and Osborn did open an "agency" in London, they did not have any clerical staff to handle administration or correspondence. With but one exception, all the entries in the Letter Register are in Lay's own hand and all the correspondence to Government offices was handwritten by Lay or Osborn. From June through August, Lay was exceedingly busy not only in his negotiations with the Government, but also in his "servicing" the needs of Osborn and the "officers" he engaged to assist him in selecting, fitting out and equipping the vessels for the flotilla.

88. "Vide" Appendix VI, F.

89. "Vide" Appendix VI, G.

90. "Vide" Appendix VI, H.

Two factors would explain the seemingly early termination of Lay's correspondence. His October 10 acknowledged Hart's letters through August 2. On the one side, Hart presumably took some vacation at this stage (Shanghai experienced a severe cholera epidemic in the Summer, 1862) but this matter aside, he was sufficiently ill in September so that he could not complete his journey from Tientsin to Peking for several weeks.⁹¹ For a number of reasons, to be dealt with shortly, most official or quasi-official "despatches" from Peking from late September were subject to abnormal delays, very few arriving in London before mid-January, 1863. On the other side, the clue is in Lay's "letter" of October 27, the notation for which is so brief, it can be quoted here in its entirety.⁹²

To Hart

Octr. 27. 1862.

A short note - at a standstill for want of funds - want to leave in February, but can't take my passage until I have sufficient in hand to discharge all liabilities.

Keeping in mind the general conditions affecting communications, it would not be unusual to forego lengthy correspondence. With the principal himself soon to be on the scene, critical questions could be postponed until his appearance. That Lay's departure had to be delayed to a subsequent sailing would normally have had little effect on this attitude.

91. "FL" Wade to Lay. Sept. 8, 1862, ("Vide" Appendix VI, K) and "E/B" Bruce to Russell, Private. Sept. 24, 1862.

92. Lay, "LR".

As acquaintance with Lay's correspondence to Hart shows, it was not concerned with definition or discussion of conceptions and objectives, or with any of the crucial problems, related to the flotilla project. His information on development of the scheme is superficial. Hart would have learned almost as much - possibly more - by reading the "Times". Lay appears to have satisfied himself that lengthy discussion was unnecessary since as he paraphrased it, "We are in perfect accord as to money & fleet..."⁹³ Lay's promise to send a copy of "an article [to be put] in "Blackwood's" in December on Chinese policy & the steam fleet",⁹⁴ aborted. The material grew into two lengthy articles which did not appear until the January and February issues,⁹⁵ but reactions from China on the contents, in either case, would not have been available before Lay, and according to expectation, the flotilla, were well on their way.

By October Lay was fretful about the delay in receiving funds and far more concerned, though still in a conciliatory mood, to insist on his interpretations of his position "vis à vis" Hart's. It should, nonetheless, be noted that, apart from policies affecting customs' administration, Hart's letters did not apparently contain any provocative questions

93. "Vide" Appendix VI, F.

94. "Vide" Appendix VI, H.

95. "Blackwood's Magazine" (Edinburgh) "Progress in China". Vol. 93, Nos. DLXVII (Jan. 1863) and DLXVIII (Feb. 1863).

concerning the conceptions and objectives of the flotilla scheme; but more of this in a moment.

The final entries in Lay's Letter Register are tantalisingly suggestive, but it would be folly to attempt any more than to record them.

To Mr. Bruce

Novr. 10, 1862

Had hoped to get 3 vessels away in December - No funds.

Chinese Govt. should be strengthened gradually - Telegraphic wire - Emigration on a gigantic scale.

French officers - intention to visit Paris.

Tartar Contingent.

To Wade - Same date.

Same purport.⁹⁶

The "profile" of Hart's correspondence to Lay has been outlined above. After a spate of letters in April, Lay's acknowledgements indicate a tapering off. None is recorded for May (though these were probably acknowledged by receipts and short notes) when Hart was travelling among the southern Treaty Ports. The last of Hart's "officials" ("No.6" Separate Series) was sent from Shanghai on June 12,⁹⁷ (last of the "officials", presumably, because Lay's criticisms of Hart's "officialese" would have reached him soon after this date). Letters of

96. Lay, "LR" Only one of Wade's private letters to Lay for this period has been found, "vide" n. 91. Lay's to Wade of June 26 and July 10 were not referred to in "LR".

97. "E/B". Hart to Lay, June 12, 1862. "Vide" Appendix VI, J.

"21st June from Woochang, 15th July & 2nd August from Shanghai...." are acknowledged in Lay's of October 10.⁹⁸ Lay records two additional letters from Peking: October 15 and November 22.⁹⁹

Hart's official of June 12, reporting his successful efforts to forestall having steamers ordered from the United States, was written before he had received Lay's reactions to his earlier communications. Yet in one respect it confirmed, if anything, one vital point underlying Lay's and Osborn's assumptions: the flotilla was expected to function as a naval contingent to assist in the suppression of the rebellion. In this letter and in those through August 2, Hart accepted the fact that discretionary authority, insofar as the flotilla was concerned, had been transferred to London. In the letters he disputed Lay's thesis on the exercise of the discretionary authority of the "officer-in-charge" in China, with special reference to customs' matters and with the kinds of commitments which could be made on general policy; but the flotilla appeared to be a closed subject.

Chronologically, Hart's letters of October and November might be thought to fit into the series under discussion, but because of abnormal conditions, they do not. The principal reason for this is that communications of late September and early October generally did

98. "Vide" Appendix VI H.

99. Lay, "Interests" p.16.

not reach London until late January or mid-February.¹⁰⁰ Hart's letter of October 15, a "money" letter, must have been in this category, for as of mid-January, Lay was still desperate for funds.¹⁰¹ It is true that Hart's letter of November 22 reached Lay on January 15,¹⁰² but the supporting documents from the Embassy, prepared in the same period, did not reach London until mid-February. The impact of their contents affected, therefore, a later phase of developments in Britain and will, consequently, be considered in that context.

There are several explanations for the unusual delays, which continued to affect the Peking correspondence up to mid-December. For the earlier period, the cause was the sinking of the mail ship, the "Colombo". Most of the mail was salvaged, but by the time it was delivered, duplicates were arriving. There was, during the later period, an extremely heavy volume of correspondence - Consular, military, foreign

100. The date spreads are available from notations on the covers of despatches received in the relevant FO 17/- files. The BPP also records date of receipt of despatches. For this period: a) "E/B" Russell to Bruce. Private. Feb. 26, 1862; b) B.M. Allen, "Gordon in China" (London, 1933), which contains many inaccuracies, has a specific reference to sinking of mail vessel "Colombo", p.59. and note; c) The originals of the September-October correspondence were water-damaged.

101. FO 17/399. Admiralty to Hammond. Jan. 31, 1863. "Vide ~~postea~~" Chapter XI p.420

102. "FL". Lay's notation of receipt on the Chinese copy of his "full powers", enclosed in Hart's letter of Nov. 22, 1862, specifies it was received on Jan. 15, whereas FO 17/375 No. 168 Bruce to Russell. Nov. 22, 1862, is marked as received, in the FO, on Feb. 16, 1863.

community activities and communications with Ch'ing officials - that built up a back-log in dispatching letters to all areas. In the special case of Lay's Imperial authority for the flotilla project, mentioned by Hart as being sent in a separate envelope along with his letter of October 15,¹⁰³ the date on the official copy bearing the Tsungli Yamen's seal was, in fact, October 24.¹⁰⁴ According to Hart, "Bruce wished to see it,"¹⁰⁵ in consequence of which only the Chinese copy was ready for transmission in Hart's letter of November 22, which on this occasion at least, avoided the Embassy bottleneck.

This last factor raises another question about the delay in correspondence concerning the flotilla. Russell's private letter of July 26, reporting the Cabinet "restrictions" on the flotilla project, should have reached Peking early in October. Did this cause Bruce to delay matters related to the flotilla? Russell's private letter of August 26 reporting his and Palmerston's decision to apply for an Order in Council should have reached Bruce early in November - thus releasing Hart from restraints! Letters and despatches of the period do not provide the answers. In the event, there was a long period during which Lay was completely out of touch with Hart covering Hart's critical conversations immediately following his return to Peking.

As for the diplomatic correspondence from Britain to China, this

103. Lay, "Interests" p.16.

104. Loc. cit. "Vide" Appendix VIII, B.

105. Lay, "Interests", p.16.

can be dealt with very easily. Following the transmission of the gazetted Order in Council and the requests to Bruce to seek Imperial ratification of the flags designed by Lay and Osborn and verification of Lay's authority, sent out in late August and early September, respectively, literally not another word was sent out from the F.O. referring specifically to the flotilla. For the latter part of 1862 this is not necessarily remarkable. The concept and objectives of the scheme had been sanctioned and, until the flotilla was actually ready to embark, there would be no need for notification nor "instruction" to be sent in advance.

Only one additional reference was made to the project in Russell's private letters to Bruce. On December 26, he wrote, "I think we are getting on with the Lay & Sherrard [sic!] enterprise to put down piracy and check Taepings."¹⁰⁶ This comment was not provoked by any specific reference in the correspondence at hand from Peking, but by developments in Britain and, of course, it would not have reached Bruce until mid-March at the earliest.

The official correspondence from the Embassy in Peking also contained one direct reference to the flotilla project being carried out in Britain. In an October despatch¹⁰⁷ - Bruce's definitive policy

106. "E/B" Russell to Bruce.

107. FO 17/374. No. 141. Bruce to Russell. Oct. 13, 1862. Enclosing Wade's report on Hart's conversation. Secret & Confidential. Oct. 12, 1862.

for the period, containing, as well, Wade's memorandum on Hart's most recent conversations with members of the Tsungli Yamen - Bruce refers to the function he expects "... the executive, which will be formed in connection with [the customs establishment], under Captain Osborne, or some other competent naval officer...." to fill. This despatch, however, was one of those that did not reach London until February 4. Beyond this, only the late November despatches which contained the verification that had been requested by the F.O. referred to the Lay-Osborn "enterprise". Most of the reasons for this situation have been given in the preceding discussion. Two, perhaps, are worth repeating: i) the Blue Book printed in mid-August aside, nothing official went out from the F.O. before late August; ii) the Blue Book and Russell's private letter of July 26 (the reference in the despatch quoted above is ambiguously phrased) left the precise status of the project in doubt, whatever Lay may have been writing about it.

But the bulk of the despatches that did arrive in London, and here the scope of the discussion needs to be expanded to include naval, military and consular correspondence sent directly from the Ningpo-Shanghai area, was concerned with Taiping activities. The ever-larger commitments of French and British detachments, the relative ineffectualness of Ch'ing forces in the region and the need for an effective naval arm, were central themes of this correspondence. On this last point, primary stress was placed on the tactical need for a support force to participate in offensives against the rebels, but it was also stressed that a water force was necessary to suppress the smuggling, with

and through connivance of foreigners, of military supplies to the rebels. This correspondence poured in on the War Office, the Admiralty and the Foreign Office without abatement from early June onwards. Indirectly, at least, it supplied a continuing "corpus" of evidence to vindicate the decision taken by Palmerston and Russell.

By a simple extension of the factors accounted for, the statement, that there was nothing directly bearing on the flotilla in Bruce's private correspondence (to include his sister, Lady Augusta, as well as Russell) to London, should not require further explanation. News directly from London (Lay) reached Peking (Wade) in early September.¹⁰⁸ Bruce was still on his summer schedule, resident in the hills 15 miles from Peking.¹⁰⁹ Thereafter his letters were affected by factors already explained. His first specific reference in private letters to Russell, appeared in a letter of December 11, 1862, which reached London in early February.¹¹⁰ Neither his official nor his private correspondence, insofar as it related directly to the flotilla, affected the development of the project.

Britain and China were, of course, sources of other exchanges concerning the flotilla. Reviewing the question in this large sphere permits the transition from an appraisal of the direct bearing which

108. "Vide" Appendix VI, K.

109. PRO 30/22/49. Bruce to Russell. Private. Oct. 14, 1862.

110. FO 17/375. Bruce to Russell. Private. Dec. 11, 1862, (between Bruce's "officials" No. 182-183) Bruce's private letters did not usually find their way into the FO files, though several of them did circulate among Cabinet members.

exchanges had on the project to a wider appraisal of the "moods" in the two areas.

From Britain for a while, at least, Lay kept Wade privately informed of his views and of developments. The only response of Wade's that is extant, which Lay received in mid-November, seemed to afford support for Lay's views,¹¹¹ - though these views may only have been expressed in generalities. Sir Harry Parkes from England was keeping in touch with Elgin, invested as Governor-General of India, through the latter's Private Secretary, T.J. Hovell Thurlow. Parke's views, which he was disseminating in Britain, are significant for they are typical of the rationalised support given by a number of Her Majesty's China Servants to the flotilla idea:

I doubt whether the Taipings will be very soon put down - hitherto they have only met an opposition that they could afford to treat with some contempt, but their collision with the Allies will cause them to feel that they will now have to fight for their existence - Shanghai, I imagine must be protected, but I am by no means one of those who advocate that "E"[ngland] should undertake the suppressing of the rebellion. I would rather see this left to the Chinese Govt. Lay and Osborn are busy organizing a Naval force, & the Imperial prestige may be weakened less by the employment of such an arm if [by] a similar one purely military - but on shore. I should think it advisable to limit the foreign element as much as possible to the work of instruction & inspection. A Chinese army in the field commanded by a European General, could not I fear be found to work, nor is it desirable for other reasons that the Chinese Government should be furnished too speedily with a large & efficient army, or the good relations now existing at Peking between the Ch. Govt. & foreign representatives might experience some change.¹¹²

111. "Vide" Appendix VI, K.

112. India Office Library, Elgin Papers. Private Sec'y's Letters. Binding 9 No. 838. Parkes to Thurlow. Aug. 11, 1862. For Wade to Thurlow, "vide" Priv. Sec'y's Letters. Binding 5, No. 485. Apr. 17, 1862.

Wade also corresponded with Thurlow, while Bruce, understandably, corresponded directly with Elgin. Wade, perhaps because of Bruce's influence or perhaps because he did not wish to jeopardise his chances of being designated *Chargé d'affaires* when Bruce took his leave,¹¹³ tended to become more cautious in expressing his views and, where policy was concerned, to confine himself to reference to others. Bruce was a bit more candid with Elgin, though usually he expressed many similar views privately to Russell, having presented the material somewhat more systematically and polished the prose. Two passages from these letters reflect Bruce's mood at the time. On September 24, he commented:

As to the Tae-ping, which is only the most formidable of several insurrections, I think the Govt. forces under Tseng-Kwo-fan are making considerable way against it - And if Osborne with a few gun-boats were here, with Ward's men to head an assault, my impression is, that Nan-king would fall....¹¹⁴

And on November 10, he wrote:

I have explained to the Prince that he must educate Chinese Officers - who in their turn must educate Chinese troops - for if Chinese are lead by foreign officers - they will end by despising their own Govt. and be more dangerous than the Tae-pings.¹¹⁵

The principle from which nothing will induce me to depart is, to use nothing but persuasion in matters where we cannot appeal to treaty-rights - But Parkes is still under the Empire of old traditions, when Chinese & English recognized no other right but might -

113. Russell (and probably Hammond) had strong reservations about Wade's suitability. "E/B". Russell to Bruce. Private. Oct. 10 and Nov. 26, 1862.

114. "E/B". Bruce to Elgin. Private. Sept. 24, 1862. Bruce had not yet learned of Ward's death.

115. This may have been the origin for the alleged Kung-Hart understanding contained in the undated document referred to in Chapter XI, n. 64. Also "vide ~~pages~~" n. 123.

and unfortunately that system of proceeding is the popular one with the foreign communities.

Johnny Russell is consciously civil, indeed friendly - I have told him I will not stay one hour, unless the Govt. back me in my efforts to make both Britishers and Chinese abide by Treaties - Merchants, Consuls, & Missionaries are re-calcitrant but with the C[ustom] - House, and Osborne, I hope to be more than a match for them.¹¹⁶

In the latter part of 1862, there were still only a small number of people who were directly involved in the flotilla project. Expressions of public views through the press, part of the inter-communication pattern, were not numerous. Withholding of information was a conscious policy of the sponsors. Public feeling, more openly expressed in China than in Britain, was sensitive on China questions. The sponsors were correspondingly sensitive about publicising their activities. Thus, to the extent that concepts and objectives were divulged in Britain, an attempt was made to emphasise the preventive, or "coast guard" aspects of the scheme.¹¹⁷ Enforcement of law and economising of public expenditure for the benefit of trade, would appeal to influential segments of opinion in Britain. Yet opinion in Britain was not easily hoodwinked and as the scope of the project became known, some disapproval and some apprehension, conveyed through public media, were expressed.¹¹⁸ Such

116. "E/B" Bruce to Elgin. Private. Nov. 10, 1862. "Vide supra" n.130.

117. "Vide antea" n.10.

118. "LCE", Sept. 1862-Apr. 1863, passim provides reprints or "précis" from a wide selection of the British Press. One interesting point was that "LCE" reprinted from the "Missionary magazine" of Oct. 1862, a letter from James Legge in which he expressed views opposed to assisting the Ch'ing government, claiming the rejuvenation of the Manchu "is a vain dream". Legge, of course, was H.N. Lay's father-in-law!

a relatively formidable force under the control of one of the belligerents - in this case a decaying legitimacy - could lead to dangerous commitments.

In China, although foreign community opinion was divided, long-term interests dictated support for established authority, however corrupt and decadent, against the relative anarchy which seemed to prevail in rebel-occupied regions. Here, the flotilla, despite Hart's personal conceptions, was viewed as an instrument for the suppression of rebellion and the restoration of order and stability.¹¹⁹ But the public, not less astute than that in Britain, though perhaps less detached, sensed what the functions of the flotilla must be once the primary objectives were obtained. Thwarted in its attacks upon the Foreign Inspectorate,¹²⁰ finding little comfort in Taiping incapacity to govern "properly" and failing in attempts to gain sanction for the establishment of independent, foreign-controlled free ports, the prospect of an "Anglo-Chinese" flotilla was the least of the apprehensions of the foreign community.

The problem of "communication" has been considered in fairly broad terms. The negative aspects may, consequently, be more apparent. Partly because of the "time lag", partly because the principals and interested parties operated in quite opposite contexts and partly

119. See "NCH" Nov. 1862 - Jan. 1863, passim and "China Mail", Dec. 1862 - Oct. 1863, especially Wright, Hart, p. 239. Quoting "China Mail", Dec. 11, 1862.

120. While Bruce systematically supported it and the FO eventually approved his policy, Hart on his itinerary was eliminating administrative inefficiencies and malpractices and effecting some modifications in regulations.

because of deliberate reticence, there was almost a complete absence of dialogue. The incongruities and contradictions, while in an incipient stage of crystallisation, were disregarded. Confident of the propriety of their own motives, Lay and Osborn had no reason to believe that their implementation of the project was not consistent with the interests of all parties concerned.

Since further developments, during this phase of the project, within the Ch'ing sphere of interests did not fit into the exchanges of correspondence problems, they have yet to be reviewed. Between the time that instructions were sent out to purchase vessels in the United States (which instructions Hart had been able to have set aside in June) and the time of his arrival at Peking in October, the flotilla project was not a subject of recorded discussion among Ch'ing officials. When Hart arrived, his immediate concerns were to get additional funds and to get the legal authorisation for Lay. Kung assented to these despite the fact that he must have been told that the expense would reach a far higher figure than the original estimates, that instead of ten vessels only seven were to be acquired immediately and that the vessels would not begin to arrive before early Spring. (It is not absolutely certain that Kung was the sole discussant with Hart on these matters. He was the chief personage on the Tsungli Yamen and since he was invariably a signatory of recommendations, instructions, etc., it is simpler to identify him as the active agent of Ch'ing policy at Peking in these matters).

Kung may have given Hart assurances that money matters would not

cause any difficulty, but the records do not show, for this period, that any official instructions were issued to provide for the guarantee funds which loomed so largely in Lay's letters to Hart. He was, however, persuaded to issue the legally phrased document purportedly investing Lay with full discretion, though he apparently had some reservations as to what was entailed.

Just when Kung decided to "hedge" the "full powers" to Lay is not certain.¹²¹ There were many other problems which required early attention, that had been held in suspense pending Hart's arrival,¹²² and further discussions on the flotilla were certainly postponed until well after the document covering Lay's authority had been handed over. Within weeks, however, Kung extracted a set of "Regulations proposed by Mr. Hart in regard to the (Chinese) Officers, Gunners, Sailors, etc., to be appointed to the Seven Steam-Vessels".¹²³ This undated "document", when it was transmitted to the British Embassy in October, 1863, was alleged to be the memorandum drawn up by Hart - vaguely specified as "last year" - which constituted the starting point for Tsungli Yamen approval of the flotilla project. In the first place, Hart's definitive memorandum of "last year" was drawn up on the basis

121. The "soft" line in Kung's attitude was typified by his Feb. 20 communication to Hart, "vide" Appendix VIII, A.

122. "E/B" Bruce to Russell. Private. Sept. 24, 1862 and FO 17/374. No. 130. Bruce to Russell. Sept. 22, 1862.

123. BPP [3271]. Enclosure 1 in Kung to Bruce. Oct. 25, 1863. (FO 17/395 No. 178. Bruce to Russell. Nov. 19, 1863.)

of nine or ten vessels and when it was drawn up, there was no certainty, as stipulated in the "document", that Osborn could accept the position as senior foreign officer.¹²⁴ In the second place, the identical specifications, in much the same phraseology, were included for the first time in a memorial from Kung which was recorded November 20, 1862.¹²⁵

The "document" itself and the references in the memorial are sufficiently indefinite to pose the question as to the form of commitment actually made by Hart. The former refers to proposals and the latter refers to suggestions. The "document", in turn, contains an extremely important concluding rider, viz.:

The above is only a general idea of the probable arrangement. What the actual arrangement will be can only be known when the vessels arrive.¹²⁶

For Hart to have committed himself without reservation and without prior discussions with Lay and Osborn to the appointment of a Ch'ing Commander-in-Chief to act jointly with Osborn may have been possible, but it was highly improbable. The terms proposed for the balance of the Imperial contingent: one "officer" - status and functions undefined - for each vessel; complements of gunners, sailors, marines and service personnel for each vessel - to embark at some unspecified time after the vessels arrival;¹²⁷ these might be "phasing in" arrangements and

124. "Vide antea". Chapter IX p327 Appendix VI C.2.

125. Rawlinson, op.cit. p. 72. It is with this memorial that Rawlinson makes his serious translation error. The memorial (like the "document") specifies that there shall be a Ch'ing Commander-in-Chief, plus Osborn, plus seven additional Ch'ing officers - one for each vessel.

126. BPP [3271]. Enclos. 1 in Kung to Bruce. 25/10/63.

127. Loc. cit.

are, at least, conceivable commitments.

But the memorial, in this respect, represents an inversion of what may have been an essentially "soft" understanding into a hard fact. The proposals were presented in specific terms, without the "document's" rider and the edict in acknowledgement prescribed the specific terms.¹²⁸ In both the "document" and the memorial, a new dimension was added to the Ch'ing contingent. The original proposals of 1861 had provided for the contingents to be made up only of Cantonese and Shanghai levies.¹²⁹ The 1862 contingents provided for the inclusion of between 25-30 percent of Manchus along with Hunan and Shantung levies.

Kung carried his hedging one step further in the memorial, a step that was also endorsed by the aforementioned edict. This was a step entirely consistent with traditional practice. Responsibility was shifted to the highest Imperially-appointed official in charge of the operations in which the force was to be employed. It is doubtful that this was done at this time because of the special personality or the influence of Tseng Kuo-fan. The sequence of these events originated in Peking. Tseng Kuo-fan was the official fulfilling his functions as well as could be expected. He was believed to have a knowledge of foreign steamers. Had this not been the case, normal procedure would have called for the appointment of a special Imperial Commissioner

128. Rawlinson, op. cit. p. 72.

129. "Ibid" p.63.

"to handle the affair".

What is being suggested here, in summary, is that Kung had second thoughts about the authorisation prepared for, and transmitted to, Lay. He was also heeding the warnings, frequently sounded by Wade and Bruce, and only very recently repeated by Bruce,¹³⁰ concerning the consequences that would follow were the Dynasty to neglect the training of its own officers and men in modern military and naval technology and tactics. But security had to be interpreted as adherence to traditional practices and procedures. The clash of "systems" was still not comprehended.

The conclusion of this sequence necessitates a departure from the chronological pattern observed so far. Tseng Kuo-fan acknowledged the delegation of responsibility in a memorial received February 7, 1863.¹³¹ Conscientious official that he was, he promptly announced his nominee for Chinese Commander-in-Chief. He also outlined his recommendations on questions of personnel; e.g., that the first native contingents should be made up exclusively of Hunan men: on the disposition of the force, i.e., immersed "among a vastly superior number of junks"¹³² on the inland waterways: on a programme for gradual training which would enable the "native" crews to operate, eventually, in coastal waters.

130. "Vide antea" p. 116. 17/374 No. 159. Bruce to Russell. Nov. 10, 1862 "Secret and Confidential". (Rec'd. at the FO on Jan. 26, 1863).

131. Rawlinson, op. cit. p. 74.

132. Loc. cit.

The edict in reply, ¹³³ while approving most of Tseng's recommendations, reflected the continuing disagreement between Tseng and Kung on where the vessels were to operate. Strangely solicitous about how the "barbarians" would feel about Tseng's position on this point, the edict "ordered that the question be settled in advance".¹³⁴

These developments lead but to a repetition of a monotonous refrain. The instruments vary, but the tone possesses the same discordant quality. Little, if any, improvement towards consonance can be detected.

The hiatus in direct communication with China, especially after he had caught up with the mails that had accumulated while he was in Germany, must have left Lay with little to do in the flotilla project. Although Osborn's contract had to be renegotiated, there is no record that discloses what new conditions were agreed upon. His collaboration on the "Blackwood's" articles probably occupied some of his time. The shortage of funds may have required some consultation and correspondence. His active mind would not, however, be satisfied by such concerns. He applied it to other types of problems.

One of his "brain-storms" was the "emigration on a gigantic scale" idea. This was to be his and Osborn's solution to the problem of

133. Loc. cit.

134. Loc. cit.

rebellion in China.¹³⁵ Another one of his preparations for the coming transformation of China was to have "open" contracts for financing (through government loans, etc.) construction and operation of railway, telegraphic and mining facilities drawn up and translated into Chinese.¹³⁶ One project was difficult to promote; he wished to have bestowed upon him the dignity of the Companionship of the Bath (C.B.). It was difficult not only because, as he stated in his application to Lord Palmerston, "I have no superior to assist me in bringing my case before your Lordship, and I am therefore compelled to address you direct, and at some sacrifice to enumerate my services to the Crown",¹³⁷ but also, because the principal grounds of his solicitations were invalid as well as misrepresented.

Lay's assertion that the only acknowledgement he had received for his part in the 1858 treaty negotiations was the Mission medal, did not coincide with the evidence. The data respecting the £500 "acknowledgement" awarded to him has already been dealt with in Chapter VIII.¹³⁸

135. "Vide antea" p371 and "vide ~~postea~~" Chapter XI pp.423-424.

136. P.R.O. Chancery Court Records. Docs. in the cases of Smith & Novelli vs. Lay (s.146, filed May 25, 1870) and Fairbairn & Osborn vs. Lay (F55 [Incorrectly indexed as F59], filed June 4, 1870). Statement in affidavit of H.N. Lay dated June 21, 1870. These suits were filed against Lay in connection with his negotiation of a Japanese Railway Loan, 1869-1870.

137. Lay. "C.B. Statement".

138. "Vide" Ch. Chapter VIII pp.293-295, n.131-134

When recounting his services from 1854 through 1859, Lay further asserted: "Other members of Lord Elgin's Embassy, whose services are not, I would submit, superior to mine, have already received signal marks of their Sovereign's approbation."¹³⁹ The members he was alluding to were Wade and H.B. Loch who had eventually been granted C.B.'s. Their awards, however, were granted because of their services in Elgin's "Embassy" of 1860.¹⁴⁰ The only member of Elgin's "entourage" who received an Honour was Bruce, not because of services rendered during the Mission, but because he was Minister-designate to the Court at Peking.

It is not possible to formulate a simple generalisation to account for this characteristic of Lay's to "twist" evidence. In moralistic phraseology, it would have to be described as a form of "dishonesty". Yet Lay could invariably rationalise a justification on grounds of "higher purpose", for his technique was not utilised in the pursuit of exclusively selfish interests. His concluding appeal in his application was as straightforward as what had preceded was devious:

As an additional motive for pressing my claims upon your Lordship, I might state that I am about to return to the capital of China, and from my official position to be in constant intercourse with the Chinese ministers. I am consequently anxious to carry back with me some mark of the confidence and esteem of my own Government, which, elevating me socially in the eyes of a punctilious and ceremonious Court would add

139. Lay, "C.B.Statement".

140. India Office Library. Elgin Papers. Private Sec'y's Letters. Binding 9. No. 874a. Elgin to Russell [from Broomhall, Fife, Scotland] Apr. 22, 1861.

weight to my counsels, and render me better able to promote the interests of both countries, in my endeavours for peaceful relations with China.¹⁴¹

However, with a request that he "should feel indebted to you if you would give my claims your kind support, should you have an opportunity," Lay forwarded his application to Layard on December 5 for transmission to Palmerston.¹⁴² Despite the appeal, the application was periodically "lost". He learned in late December that one of his referees, Adm. Sir M. Seymour (Ret.) had been asked to supply a second testimonial. He heard no more about the matter during the remainder of his stay in England.

On December 8, a few days after Lay submitted his application, he, Osborn and a whole "coterie" of China Hands, including Parkes and Alcock, attended one of the regular meetings of the Royal Geographical Society.¹⁴³ The reason for the interest - Osborn was a Fellow, in any case - was that Alexander Michie and a "Mr. Grant" were presenting papers on their travels in Manchuria and from Peking to St. Petersburg, respectively. Why the Chancellor of the Exchequer should have been present, unless some form of public relations engineering had been employed, is not certain. Gladstone's principal interests in China,

141. Lay, "C.B. Statement".

142. FO 17/386. Lay to Layard. Private. Dec. 5, 1862.

143. "LCE" V. Dec. 10, 1862, p.43. The "Times", Dec. 12, 1862, p. 8b & c, had a leader on the meeting. "LCE" V. Dec. 29, 1862, pp. 76-77, had a much fuller report on the remarks of the principals.

such as tea duties, opium revenue, speeding up indemnity payments, etc., had little to do with geography.

Normally the press reports of the meeting would have gone relatively unnoticed and it was apparently a tradition that the discussions that followed the formal presentations were considered privileged.¹⁴⁴ But in response to questions to Parkes, Lay and Osborn from the floor, including some from Gladstone, Lay and Osborn launched into explanations of their concepts and objectives not only with reference to the flotilla, but also, expanding on the influence and resources which they professed to command, with reference to the general policy of transformation which they expected to effect within the Ch'ing administration and within the Chinese Empire. It amounted to an informal, unexpurgated and - in the event - indiscreet version of the articles to be published in "Blackwood's".¹⁴⁵ The ideas presented were all lofty in concept, humanitarian in purpose and progressive in technique and, one almost need not add, directed to the promotion of commercial and diplomatic intercourse for the mutual benefit of all.

The aftermath might not have become a cause of sensation had not the Chairman invited Mr. Gladstone "to say what impression had been made upon his mind by the explanations..."¹⁴⁶ He forthwith not only reviewed all the economic advantages which he foresaw for Britain,¹⁴⁷

144. "NCH" No. 679. Aug. 1, 1863, p.122. Also suggested by "Times" leader of Dec. 12, 1862.

145. "Vide antea" n.95. The Jan. issue was released in late Jan., the Feb. issue in early March.

146. "Times" Dec. 12, 1862, p.8c.

147. "LCE" V. Dec. 29, 1862, p.77.

but also:

expressed his personal and Ministerial approval of the departing expedition and prophesied of the day when its leaders should come back in professional fame, and also bringing with them fresh glory to their country. He bade them go and prosper, as men who went to undo what had been too often done, and whose mission it was¹⁴⁸ to carry to the Chinese blessings and not the curses of civilization.

A detailed report of the "conversation" did not become available until about two weeks later, but the earlier, sketchy reports printed in the "London and China Express" and the "Times" opened the question for leader comment in many of the news media. An analysis of the reactions would be revealing, but not especially relevant, since apart from generating much publicity about the flotilla and about Lay's and Osborn's long-range plans for China, it had no affect on concluding the British phase of the project. It did have the effect of alerting the foreign community in China. But if any damage was done by the adverse publicity, most of which was levelled at the Government, Lay and Osborn had at least got what was interpreted as a public endorsement from the Government for a rather provocative policy.

148. Condensed and somewhat distorted paraphrase as it appeared in "Times" Dec. 12, 1862, p.8c. This was the quotation that supplied the text for most of the press comment. In the fuller version, however, there was a eulogy of Osborn and most of the remarks quoted were directed at him.

Chapter XI

The Masterless Servant: 1863-1864

The excitement generated by the RGS meeting and the advent of the holiday season were probably responsible for preventing Lay from embarking on any new activities during the ensuing weeks. Nevertheless, unbeknownst to Lay or Osborn, the F.O. was actively engaged in an alteration in policy which affected the core of the flotilla scheme. The reports about hostilities in the lower Yangtze region and the actions taken by Brig. Gen'l. Staveley and Vice-Adm. Sir J. Hope reached crisis level in the F.O. when, at the end of November, 1862 detailed information received by the Admiralty intimated that a British officer was being proposed to succeed in command of F.T. Ward, who had died of battle wounds. British officers had already been seconded or were otherwise being used to assist Imperial forces.¹ The line defining their status was becoming rather blurred.

The F.O. felt compelled to take some action, especially in view of the issues when legal sanction for Lay and Osborn had been arranged. But the Order in Council for these two had been deliberately made restrictive, stipulating among other things that it would be lawful for other persons to enlist in the Emperor's service through Lay and Osborn "and no other person or persons whatsoever,....either by land

1. BPP [3104] Adm. to FO. Nov. 27, 1862. Enclosing Hope to Adm. Oct. 1, 1862 (with "P.S." of Oct. 6).

or sea..." The F.O. again consulted the Law Officers as to whether this Order in Council would be adequate or whether a "larger one [were] needed," and if the latter, then the Law Officers were asked to supply a draft.² Before the Law Officers presented their decision, further despatches from the Yangtze region were received through the War Office, which, tacitly assuming the "fait accompli" of a British Officer being named as a successor to Ward, wished to know if "General Staveley's proceedings....may properly be approved, and if so whether the services of the officer....will still be required after the arrival in China of... Lay and....Osborn."³ As for approval, the F.O. replied it would approve if the War Office would, but refused to be committed any further.⁴

The Law Officers submitted their draft Order in Council on December 18,⁵ but the F.O. did not forward it to the Council Office until December 26.⁶ Another two weeks elapsed before it was approved and gazetted. Technically, it extended the Lay-Osborn Order in Council to permit all military officers to take, in effect, unrestricted service

2. FO 83/2251. FO to Law Officers. Dec. 4, 1862.

3. FO 17/387. W.O. to Layard. Dec. 11, 1862.

4. "Ibid" F.O. to W.O. Dec. 17, 1862. Russell appears to have made the decision to give qualified approval, but it was Hammond who added, "Lord Russell is unable to say whether the services..would still be required." Copy to Bruce. FO 228/319. No. 209. Hammond to Bruce. Dec. 29, 1862.

5. FO 83/2251. Law Officers to Russell. Dec. 18, 1862. The Law Officers did not comment. They just forwarded a new draft Order in Council.

6. FO 17/387. Russell to Privy Council Office. Dec. 26, 1862. (Order in Council retroactive to Dec. 12, 1862).

in the Emperor's forces up to the same terminal date, September 1, 1864. This new action, seemingly a realistic and logical move from the decision made in August, was nonetheless antithetical to the concepts underlying the flotilla scheme. The earlier Order in Council, whatever the soundness of the concepts and objectives of the scheme, was conditional and discretionary. The second Order in Council was unconditional and discretion was left with each individual officer. While it was one step along the road to "less-than-neutrality", it was two steps back along the road generally designated, not only by Lay, but by Bruce as well.

Despite the connection between the two Orders in Council, neither Lay nor Osborn was either consulted or informed by the F.O. of the step it was taking. The F.O., in fact, consulted only the Law Officers.⁷ From a diplomatic standpoint, the F.O. could not, of course, "consult" Lay and Osborn, since they were the agents of the Emperor for a specific undertaking and not his representatives and, equally, they could hardly assume responsibility for military policy in China. By failing, at least, to discuss the problem, the F.O. had got itself into an untenable position. Soon after the second Order in Council was issued, the F.O. as well as the War Office began to receive inquiries from

7. "Ibid" Russell to WO. Jan. 9, 1863, represented the first "explanation" of why the Order in Council had been proceeded with and the conditions under which it was to apply.

officers who wished to take service with the Emperor.⁸ The War Office specifically asked the F.O. if there were a Chinese agency.⁹ Hammond's reaction was, "I presume they should apply to Mr. Lay."¹⁰ It appeared, however, that it was probably Lay who was sending some of the applicants to the F.O. and the War Office, for in the official reply to the War Office, drafted several days later,¹¹ the F.O. was forced to state not only that it was unaware of any agency other than Lay and Osborn, but also:

that the Order in Council...was not prepared in communication with that Agency, and that His Lordship believes that [they] are occupied exclusively in engaging officers & vessels for service in the ["Anglo", deleted in draft] Chinese Fleet.

And further,...Lord Russell is not aware that the Chinese Govt. has established any Agency...for the purpose of engaging military officers, to serve in the Chinese Army - [the balance added by Hammond in the draft] neither have H.M. Govt. any intention of interfering any further in the matter than by making known H.M.'s permission, as signified in the Order in Council, for British Military Officers taking service under the Emperor of China.¹²

The later stages of this sequence coincided with a new stage in the activities of Lay and Osborn. At the start of the new year

8. FO 17/399. During January and February several applications were received. One application received Jan. 3, was forwarded to Lay. Applications received after Jan.9 do not appear to have been forwarded by the FO.

9. "Ibid" WO to Hammond. Jan 22, 1863.

10. Loc. cit. Hammond's notation.

11. FO 17/399. Hammond to WO. Jan. 27, 1863. Hammond's draft initialled by Russell.

12. Loc. cit.

information was released as to the conditions of service for men to be enlisted for the flotilla.¹³ This was another radical departure from Lay's original plans, for he had not yet received any further remittances nor his Imperial authorisation. At first glance it might appear that he and Osborn, even though not informed by the F.O. of the new Order in Council,¹⁴ had had intimations of it from other sources and for some reason were desirous of "beating the gun". This would only make sense if they were incorrectly informed; viz., that general enlistment was to be sanctioned, in which case by publicising their very attractive conditions, they might hope to have the pick of the best men wishing to enlist in the naval arm.

Some other reasons are, however, more cogent. The vessels acquired from the Admiralty for reconditioning were ready for crews. If additional funds were received, the low-speed gun-boats could be dispatched. Another reason, related to this, was that Lay knew Hart was to be "en route" to Peking in late August or early September. Allowing for the maximum delay in "mails", it would be reasonable to expect both funds and formal authorisation in the first January mail, due in England about the 12th.

13. "Times". Jan. 6, 1863. p.9c. Osborn and Lay were using the opportunity to introduce "civilisation" into European naval practice! Flogging was abolished, a scale of compensation to widows, mothers and children of men killed in action was provided and pay and other allowances were relatively more generous than for the R.N.

14. The decision had been made, of course, on Dec. 26. "Vide antea" n.6.

The mail did bring the official Chinese copy of Lay's authority.¹⁵ At a later date, when describing his actions on its receipt, he was ambiguous about them, stating that he "submitted it to [his] legal adviser, who expressed the opinion that under the circumstances [he] might act upon it with safety."¹⁶ This consultation must have taken place within a day of receipt, indicating clearly that Lay did not have the "official" (or any literal) English translation and the opinion must, consequently, have been based on Hart's assurances that the authority was all Lay had asked for.

Again, possibly as a partial reflection of their reaction to the second Order in Council, on the day following receipt of his "powers," Lay and Osborn~~x~~ committed to writing a thirteen-clause "mutual understanding," to which was appended a set of explanatory notes.¹⁷ Clause 2 stipulated that Osborn was "to have entire control over all vessels of European construction, as well as native vessels manned with Europeans... in the employ of the Emperor....or, under his authority, of the native guilds." While the explanatory note emphasised the naval aspect of this jurisdiction and was general in its coverage, the reference to

15. "Vide" Appendix VIII B.

16. Lay "Interests" p. 16.

17. FO 17/404. Enclosure in Osborn to Russell. Nov. 23, 1863. This was the version that was printed in BPP [3271]. The copy forwarded by Bruce, enclosed in FO 17/395, No. 178. Nov. 19, 1863, did not include the explanatory note. Despite the later date, Osborn's documentation reached the FO more than a month earlier.

vessels of native guilds and including, in the explanation, "men-of-war belonging to particular Mandarins" was, in part, a reference to the Ever Victorious Army (EVA). The EVA was primarily a land force, but an important element of it was its "naval" arm.

Yet another subtle aspect of the agreement, the explanation and the EVA is evident. The latter was a pseudo - "Imperial" force, primarily the instrument of "native guilds" and "particular Mandarins". It was to this force that most British Officers, acting under the second Order in Council, would attach themselves. Though referring specifically to lorchas and junks commanded by Europeans (characterised as "freebooters" as well), Lay and Osborn explained, "they should come under Imperial "authority", without which no European has a shadow of a right to levy war in China".¹⁸ Thus, while Lay and Osborn may in any event have intended to delegate to themselves - subject, of course, to formal ratification (Clause 12) - a broad range of control, the absolute terms of reference used in the agreement may have been partly motivated by a desire to secure the position threatened by the second Order in Council.

Lay's and Osborn's agreement was undoubtedly important to them. It did not, however, have any immediate importance to any of the other principals associated with the flotilla project. It was not sent in

18. FO 17/404 "vide" n. 17.

advance to China, because even if there were objections to its terms, discussion would have to await Lay's arrival. There is no record of a copy having been sent to the F.O. Lay and Osborn were accountable to H.M. Government under their Order in Council. It might have been a courtesy for them to have provided the F.O. with a copy, but it was quite in character for Lay to retaliate for the failure of the F.O. to consult with him and Osborn in regard to the second Order in Council.

Lay did not, either, advise the F.O. of the receipt of his authority. The Chinese would have been meaningless (there were no translators at the F.O. and even such men as Parkes and Medhurst, Jr., who were in England, required the assistance of Chinese scholars) and according to Hart's information, the F.O. would be receiving an "official" translation from the Embassy by the next mail.¹⁹

The lack of funds continued to hamper the organisation of the flotilla²⁰ and Lay's self-restraint seemed to break down entirely. He was in possession of "full powers" and he began to use them. Still desiring to purchase an Admiralty vessel for a storeship, he requested of the Admiralty "that the Emperor of China may be granted twelve months credit for the purchase money amounting to £8000..." The request

19. Lay, "Interests" p. 16. The "next mail" containing these documents did not arrive at the FO, however, until Feb. 16, 1863.

20. "Ibid" p. 17. Lay asserted that "little more than half" of £250,000 had been received by the beginning of March. Since £120,000 had been received by October 10 ("vide" Appendix VI, H.), only about £10,000 - £15,000, at most, could have been received in the entire five-month period.

was passed to the F.O.²¹ Russell's laconic instruction, "Ask Treasury's consent", devoid of his faint suggestion of approval, was carried out.²² The Treasury (Gladstone) did not disapprove nor did it give positive consent.²³ For some unexplained reason the matter was dropped.

In what was almost a diversion at this stage, Lay had his attention drawn to customs affairs. As a result of the chaotic conditions following the opening of the Yangtze to foreign trade in 1861, increasingly restrictive revisions of the regulations applicable to the trade were introduced under Hart's direction in 1862. Reports of the Shanghai Chamber of Commerce's (the various national Chambers having combined) complaints to Bruce and Bruce's reply reached London at the end of January. Robert C. Antrobus, former Chairman of the Shanghai British Chamber of Commerce, wrote, complainingly, to the "Times".²⁴ Lay replied to Antrobus through the "Times" and the correspondence continued for almost a fortnight, when it was broken off by Antrobus.²⁵ The "argument" proceeded at cross-purposes since Antrobus was a) claiming non-treaty concessions as a right in perpetuity

21. FO 17/399. Adm. To Hammond. Jan. 31, 1863.

22. "Ibid" FO to Treas. Feb. 5, 1863.

23. "Ibid" Treas. to FO [Omission of date, author's oversight].

24. The report with leader, appeared in "Times", Jan. 30, 1863. p. 4f. Antrobus' first letter, dated Jan. 31, appeared in print Feb. 3. 5f.

25. "Times", Feb. 12, 1863. p.9c. Lay's last letter in this series (dated Feb. 16) appeared Feb. 17, though it also referred to news reports in "Times" of Feb. 13.

and b) insisting that, where treaty provisions were not specific enough, the most favourable interpretation in the interest of foreign rights should prevail. Lay, though indicating a difference of opinion with Bruce, insisted that the Ch'ing government had the unilateral right to withdraw or rescind voluntary concessions and that its interpretation of ambiguous treaty provisions should prevail.

Some statements made in Antrobus' opening letter, while not representing a majority opinion of foreign merchants in China, did perhaps represent an influential segment of "respectable" opinion. He asserted:

I have always considered it the decided interest of British merchants to support the present system of customs houses in China under foreign inspection, not only as affording a valid security for the equal collection of duties, but as providing, as is now exemplified in the case of the newly disciplined Chinese force at Shanghai and by the powerful squadron fitting out in this country under Captain Sherard Osborn and Mr. Lay, the pecuniary means by which a gradual regeneration of the power of the Chinese Govt. may, it is hoped, be effected....²⁶

Lay had, by now, evidently decided to take passage for China as soon as possible. He turned over responsibility to Osborn to complete the flotilla's organisational phase in Britain, signed a "guarantee" for £50,000 with a private bank should Osborn need additional funds²⁷ and presented three documents to the F.O.²⁸ All three have features

26. "Ibid" Feb. 3. 5f.

27. Lay, "Interests", p. 17.

28. At least one of these, the first discussed, was requested by the FO. It refers to a letter from Hammond of Feb. 25, 1863, draft of which was not located in the FO files.

of importance. As they were all submitted within three days, strict chronology will not be observed in the following presentation.

Firstly, Lay provided a list of the six vessels acquired, with the number of guns and personnel for each.²⁹ No mention was made that two additional vessels were to be added to make up the full flotilla: a storeship and a dispatch-boat. This may suggest that Lay did not wish the F.O. to become too aware of the extent of the difficulties being caused by shortage of funds.³⁰

Secondly, Lay prepared a short memorandum concerning his ideas on emigration which he forwarded to Russell, soliciting H.M. Government's support through Bruce.³¹ The memo was a much more conservative statement of the idea which was alleged to have been given at the RGS meeting in December. But the memo also included the following:

It is my intention upon my arrival in Peking, whither I proceed tomorrow [March 5], to urge the subject upon the attention of the Emperor's Counsellors, with the hope of inducing them to repeal the law against emigration, as has already been partially done by the Governor General of Canton, during our occupation of that city.

It would contribute materially to so desirable a result, if the Representatives of the Treaty Powers would, when necessary, support such advice with the weight of their own representations.

The Imperial sanction to emigration is the more imperatively required at the present juncture, from the possibility of large bodies of Taipings being made prisoners, in which case it is earnestly to be

29. FO 17/400. Lay to Russell. March 2, 1863.

30. The FO was, of course, aware that additional vessels were being sought and it knew, at least, that Lay and Osborn had been pressed for funds as of the end of Jan. ("vide antea" p.421, n.21), but over a month had elapsed since the question of a relatively small amount had been discussed.

31. FO 17/400. Lay to Russell. March 4, 1863.

hoped that they will be suffered to emigrate, instead of being subjected, as heretofore, to the executioner's knife.³²

The three central points of interest are: i) specified date of departure; ii) expectation of joint action by Representatives of the Treaty Powers; iii) application of scheme to prisoners of war rather than to Taipings as a body. He emphasised, also, the population of China as a general problem and referred to countries like "Burmah" and Borneo as underdeveloped and under-populated areas to which the emigrants could be sent.

Russell did not take action until March 17, when he noted, "This plan should be recommended to Mr. Bruce."³³ This was accordingly done in a despatch phrased in rather strong terms of support.³⁴

The last of the three documents to be considered was a booklet "The Regulations and Instructions for the government of His Imperial Majesty's Naval Service (abridged and adapted from the British Admiralty Instructions)', which contains at the commencement, the agreement made with the Officers and men of the European Chinese Naval Force."³⁵ But the Lay-Osborn understanding was not included. By the first clause of the agreement, the men were bound, as long as they received their pay,

32. Loc. cit.

33. Loc. cit. Russell's notes as indicated.

34. FO 17/388. No. 48. Russell to Bruce. Mar. 21, 1863.

35. FO 17/400. Lay to Russell. Mar. 2, 1863. Another copy supplied by Osborn. FO 17/492. Mar. 26, 1864. Summary of all the clauses in Wright, "Hart", pp. 234-235.

"to serve His Imperial Majesty...as we would serve our own Sovereign; to obey the orders of the Commander-in-Chief for the time being, and of our superior officers as if we were serving on a British vessel of War..."

Clause 7 was also very interesting:

We...pledge ourselves that we will treat all Chinese officials with becoming respect, and be kind and conciliatory towards the Chinese people generally; that we will make every exertion to give the Force a high character for good order and efficiency, and use every endeavour to ensure unanimity and goodwill amongst those composing the Force.³⁶

The F.O. sent the manual to the Law Officers to find out if it satisfied the stipulation of their report submitted with the revised Order in Council of August.³⁷ The Law Officers reported back on March 31:

that the subject to which reference was made in the former Report was the possible participation of this Anglo-Chinese force, in atrocities perpetrated, in the course of hostilities, by the Chinese against the Rebels. -

But as the agreement, made with the officers and Men, embodies the observance of all applicable rules of discipline in force in Her Majesty's Navy, and as the force is to be entirely under the command of British officers, the ["evil" - deleted] danger of any such participation appears to be guarded against.³⁸

Russell noted on the report, "Sir F. Bruce H.M. Consuls at Shanghai, & Canton". What should have been a routine procedure of transmission never appears to have been carried out. Whether this neglect was the result of an undercurrent of disapproval or hostility in the China Section to the scheme or careless indifference cannot be finally determined.

36. FO 17/482. Enclos. Osborn to FO. Mar. 26, 1864.

37. FO 83/2251. Hammond to Law Officers. Mar. 11, 1863.

38. "Ibid" Law Officers to FO. Mar. 31, 1863.

There is more evidence to support the latter alternative, for towards the end of March, when the F.O. was informed that General Staveley wished permission to organise a British Contingent to campaign with the Imperial forces (which the War Office opposed),³⁹ Russell reacted: "This question is a very grave one. If adopted a convention with China will be necessary. When does Mr. Lay go?" A week later, when the War Office sent more details about Staveley's plan,⁴⁰ Hammond "replied", "Mr. Lay went a few days ago." [!!]

Russell had not been quite so unaware of Lay's existence for on March 19 he had written to Elgin:

I am told Mr. Lay wishes very much to be a C.B. on account of his reputation with the Chinese. The Queen has referred me to you, and I should be very glad if you could recommend him for the honour he needs.⁴¹

Yet Hammond at this particular period seems to have been singularly obtuse. He had been responsible for having Lay's indiscreet customs memo of January 1862 printed in the most recent set of Parliamentary Papers, which had been released about March 13.⁴² Anyone with the least knowledge of Lay would probably have expected that if he were anywhere within reach, he would have come storming into the F.O. at the earliest

39. FO 17/400. WO to Russell. Mar. 26, 1863. Russell's reaction was a notation on this letter.

40. "Ibid" WO to Russell. Apr. 2, 1863. Hammond's note on this letter.

41. India Office Library. Elgin corresp. "Misc.letters-In" - 1861-1863. "226". Russell to Elgin.

42. It has been difficult to determine the exact date of release of BPP [3104]. Evidence of press comment, on portions other than Lay's memo, place the date before mid-March.

possible moment.

In fact, of course, Lay had left when he said he would, on March 5. It was doubtless more than a coincidence that this date coincided with the launching of the vessel - the "Keangsoo" - which was to be the pride of the flotilla.⁴³ Nothing appears in the records to indicate whether or not Lay received any further information, before his departure, from Hart on the latter's activities at Peking. If any such information did arrive in the bustle of final preparations, it did not cause Lay to alter any of the arrangements in process of completion in Britain.

Lay travelled through France to take up the booking for himself, family and nurse from Marseilles on March 12.⁴⁴ He had intended to consult with officials of the French government on the flotilla project, but on this matter, also, there is nothing in what remains of his records to indicate whom he saw or what was discussed.

The final preparations for the phased departure of the flotilla from Britain can be ignored without any serious qualms. The one important factor was that the sailings continued to be delayed. Lay's departure placed additional burdens on Osborn, funds were still slow in arriving and, according to press reports - the items savoured of "leakages"⁴⁵ -, the F.O. was dilatory in processing clearances to enable

43. For report of launching, "Times", Mar. 8, 1863, p.12c. For performance, "Times", May 8, 1863. p.11f.

44. "LCT". V. Mar. 16, 1863, p.169.

the vessels to complete their equipment, etc. Osborn's meticulousness may well have been another contributing cause of delay. The vessels were all away, however, before a major China policy debate (very poorly attended by members) was opened in Parliament.⁴⁶ But except for the delay itself, these aspects did not have appreciable affect on the sequence of developments in China following Lay's arrival there.

In covering this sequence, a different pattern of presentation will be employed. A considerable portion of the documentation for this next, and final, sequence has been printed, has been reasonably accessible and has been frequently cited in primary, peripheral or derivative studies. Consequently, a brief outline of the chronology of principal events only will be presented. This will be followed by more detailed consideration of evidence heretofore not accessible and of factors heretofore given little weight in the appraisals of the dénouement in the light of all the evidence presented.

Lay reached Hongkong on April 24 and within two days he embarked for Shanghai, where he arrived on May 1. He spent most of May at Shanghai, settling in; re-assuming the direction of the Inspectorate; trying, without success, to browbeat the provincial authorities (principally Li Hung-chang) to authorize the setting up of a three-year "guarantee fund" to secure the pay, pensions, ordnance, etc., for the flotilla;⁴⁷

46. For the debate, Hansard's (Third Series) Vol. CLXXII (1863) pp. 270-329 (July 6, 1863). Efforts had been made to force the Government into debate on May 15 ("Vide" Vol. CLXX pp. 1783-1803). Reports in "Times", July 7, 1863, pp. 8-9, and leader, July 9, 1863, p. 8c, f.

47. Cheng, op.cit. p. 114. Li to Hsüeh Huan, May 16; p. 115. Li to Tseng Kuo-fan, May 21. Bredon, op.cit. pp. 71-72 reports on Li-Lay meetings and claims that by Hart's intercession funds question was agreeably settled. If so, it was not to Lay's satisfaction, for it was a major issue when Lay went on to Peking.

consulting with and admonishing Colonel Gordon, RE (who had succeeded to the command of the EVA in January, following the dismissal and defection to the Taipings of F.T. Ward's successor, H.A. Burgevine) with respect to the unsatisfactory status and position of British officers "serving" in the Imperial forces.⁴⁸ He set off for Peking, arriving there on June 1.

The metropolitan Ch'ing Authorities not only refused to sanction the "guarantee fund" on Lay's terms, but they also refused to ratify the Lay-Osborn thirteen-clause understanding. They found two of the clauses, which provided for the absolute centralisation of the chain of authority passing from the "Emperor", directly through Lay and then immediately to Osborn as sole Commander-in-Chief, completely unsatisfactory. Lay, thereupon, appealed to Sir F. Bruce, employing all his powers of persuasion to acquire Bruce's support. Bruce responded, not directly identifying himself with the flotilla scheme nor with the terms of authority defined by Lay and Osborn for its control, but by strongly re-asserting the necessity for effective centralised authority in general and by his insistence that British officers, serving in the Imperial forces in the field against the Taipings, should be brought under direct central government, as opposed to provincial government, command. Bruce's

48. "E/B" C.G. Gordon to Bruce. July 3, 1864. Enclosing memo "Views respecting Soonkong Force", date on heading "9th May 1863" (signed) "C.G. Gordon21st May 1863" with a "P.S." added. In his letter Gordon states that memo was given to Lay after three interviews he had with him in May, 1863.

pressure was ineffectual, mainly because it was all too apparent that he was, in actuality, powerless to impose his conditions. As Kung and his colleagues refused to give ground, Lay's continuing efforts were also unavailing.

Kung sought to break the stalemate by drafting an agreement, allegedly reflecting the concurrence of Hart and Lay to "compromise" proposals for the direction and operation of the flotilla. The "agreement" provided for a native Commander-in-Chief" with whom Osborn was to act as "joint" Commander-in-Chief and, with virtually no attempt at dissimulation, the flotilla was placed under provincial jurisdiction. In the meantime, a "modus operandi" had been worked out to assure monthly allocations from customs' receipts to cover the fiscal obligations for the flotilla for a four-year period.

Lay, however, emphatically repudiated the "agreement", despite the fact that he was told it had been further authenticated by an Imperial rescript on July 8. Lay made it clear that he would urge Osborn to refuse to serve under the terms of the "agreement". Kung could not comprehend - or would not, since by this time he was aware, through the arrival of a personal emissary, Hst'leh Huan, as well as memorials, of Li Hung-chang's strong opposition to Lay's influence - the possibility that both Lay and Osborn could refuse. Bruce, toiling under an unusual amount of summer work and bereft of Wade's services - for he departed in late June on a long delayed home leave - pined for his Holiday retreat.

Pending Osborn's arrival, Lay made a quick trip to Shanghai to

evacuate his family from the threat of yet another moderately severe cholera epidemic. On his return to Peking, he applied himself to working out, amicably, new and revised policies for the collection and administration of customs' revenues. Hart, who had not in the first instance arrived at Shanghai from Peking until May 9,⁴⁹ but who had then travelled to the capital with Lay, remained there until early September. He became completely disassociated from the flotilla project, serving "informally" as adviser on Customs operations and as "assistant" to W.A.P. Martin, who was translating portions of Wheaton's "International Law". H.T. Davies, however, had died on July 13, which made possible a solution to an extremely delicate problem. From September 12, Hart was posted as Commissioner of Customs at Shanghai and concurrently "Superintendent" for the Yangtze region foreign customs administration, comprising four treaty ports in addition to Shanghai.

The first units of the flotilla reached the Yangtze on August 1, and Osborn arrived with the last units a month later. He found that both Li Hung-chang's and Taiping agents had been trying to entice the crews of the units which had arrived earlier directly into their

49. Cheng, op.cit. p.114. Li refers to Hart's arrival yesterday [May 15] from capital. Bredon, op.cit. p.72 claims Hart returned from Yangtze trip. "CMC" I.p.32, reproduces "Maritimes Customs Circular" (First Series, 1863) No. 18 in which Hart records Lay's return and resumption of office: dated Shanghai, 9th May. Hart claimed later that Lay did not advise him of agreements until they had reached Peking in June. "E/B" Enclosure in Bruce to Russell. Private. Feb. 2, 1864. Extract "Mr. Hart to Mr. Brown" Jan. 13, 1864. "Vide" Appendix IX A. This is also a clear refutation of assertions made by Wright in "Tariff", p.169 and "Hart", pp.234 & 255 (n.34 & 35) that on unimpeachable evidence Hart wrote a strong letter to Lay, then in England, objecting to the agreements.

respective "services" and while there had been few acceptances, morale and discipline were disrupted. He restored these, after which he had some consultations with General Brown. Finding Brown seriously disgruntled at Li's behaviour towards British officers and the forces controlled by them - although Gordon was anxious to have immediate cooperation from Osborn for launching new campaigns,⁵⁰ - and lacking at least positive instructions from Lay, Osborn decided to relocate most of the flotilla off Chefoo and from there, to proceed to Peking. General Brown was to follow shortly afterwards.

Immediately on Osborn's arrival at Peking on September 25, Lay formally presented him with Kung's "agreement", to which Lay had, of course, appended his objections. Three days later, after a number of interviews with members of the Tsungli Yamen, Osborn addressed his formal objections in writing to Kung. At about the same time, heeding the complaints of General Brown, Bruce, confining himself to the question of British officers serving Imperial interests, addressed further remonstrances to the Tsungli Yamen.

For shortly under three weeks Lay cajoled, argued and stormed at

50. Allen, op.cit. pp. 123-124. Allen claims Brown tried to persuade Osborn to join Gordon immediately, but this claim is not consistent with Brown's activities at this time. In fact, in reply to Brown's complaints, Bruce provided him with a letter advising him that if Chinese did not give effective cooperation to "European" forces, the officers should resign at once. FO 228/336. Oct. 6, 1863. "Vide" also FO 17/404. WO to Hammond. Nov. 17, 1863, enclosing despatch from Brown to WO. Sept. 14, 1863.

members of the Yamen, Osborn generally being present and Kung never.

On October 13, Wensiang asked Lay to transmit a verbal message to Osborn, "that...Kung would decline to ratify the [Lay-Osborn] agreement.."51 Osborn sent a written ultimatum to Kung on the 15th stating, in conclusion, "if I do not receive a favourable reply [i.e. ratifying the agreement] within 48 hours it will be necessary to immediately disband the force."52 Receiving no reply, on the 19th Osborn forwarded all the documents to Bruce with a covering letter stating his intentions to disband the force, but requesting instructions concerning the vessels, since, while these were the property of the Imperial Authority, he feared they would constitute a danger if turned over to irresponsible foreign elements under provincial jurisdiction in the Shanghai area.53 Some confusion prevailed for about two weeks, during which the Ch'ing Authorities consulted regularly with the American Minister, as well as Bruce, on the problem, until it was mutually agreed that the force would be

51. FO 17/404. Osborn to Russell. Nov. 23, 1863. Enclos. Lay to Osborn. Oct. 13, 1863.

52. "Ibid" Enclosure. Osborn to Kung. Oct. 15, 1863.

53. "Ibid" Enclosure. Osborn to Bruce. Oct. 19, 1863. "Vide" also an interesting account on this period in W.A.P. Martin, "A Cycle of Cathay" (Edinburgh, 1896) pp. 231-232, where it is recounted "that Bruce had 'struck his flag'" and that three days of U.S. persuasion decided him to capitulate. This may account for the delay beyond the 48-hour grace period. However, although Bruce replied to Osborn on Oct. 19 that he was writing to HMG for instructions, on Oct. 29 Bruce wrote to Russell (FO 17/404 No. 164) that the question of emancipating "Captain Osborn from the authority of....local officers....is not definitely settled... but I see no prospect of a favorable termination..."

repatriated in the vessels which were placed under Osborn's authority for him to dispose of them in consultation with British authorities in India and Britain. Interim financing having been arranged,⁵⁴ Osborn departed from Peking on November 6.

Lay's activity in this last stage had been confined to rendering assistance in working out the costs and allocations for the repatriation. He claimed, subsequently, that after the decision had been taken, he offered to resign as Inspector-General, but that he was strongly urged not to do so by members of the Tsungli Yamen. However, on November 15, he was dismissed and instructed to settle his accounts with Hart, who had been promptly named as his successor. Lay very quickly supplied a general accounting for most of the funds that had been assigned to him for the project and departed on November 21 for Shanghai. He completed the reconciliation of the details of the accounts with Hart on January 8, and began his homeward journey on January 9.⁵⁵ He did not, in arranging his personal affairs, liquidate his property investments in

54. "Ibid" Osborn to Russell, Enclosure. Bruce to Osborn. Nov. 6. In this letter Bruce only committed HMG to advance funds, to be repaid for the cost of the return of the vessels and of repatriation of the force, the Ch'ing government to be indemnified for any loss in value of vessels, stores and ordnance. The Tsungli Yamen members, Lay, and Osborn, all understood that HMG would also bear the expense of the vessels' trip back to India and Britain; "vide", Lay, "Interests" pp.31-32 and FO 14/492. Osborn to Russell. Dec. 20, 1864. Enclosures.

55. "FL". Hart to Lay. "No.2". Special Series. Jan. 7, 1864. Lay to Hart. Jan.8, 1864. NCH No.703. Jan.16, 1864. p.10. Notice of departure of Mr. and Mrs. Lay per "Ganges" (which left on Jan. 9.)

the Shanghai settlement.

The long drawn-out sequence of the dénouement was basically an anticlimax. The critical phase of developments took place when Lay confronted the Tsungli Yamen members with the principles and concepts underlying his agreement with Osborn. While not phrased in the most tactful and diplomatic language, they did represent the conditions upon which the sanction of the British Government had been obtained. All the other questions: guarantee funds, distribution of the units of the force, even the peripheral objectives and the identity of the principals themselves - in the last resort⁵⁶ - all could be subject to negotiation, but the force had to be a unitary force and it had to be under the unitary direction of an Anglo/European Commander-in-Chief.

On the Ch'ing side, quite independently of the influence of the individual provincial officials,⁵⁷ of the unforeseen financial obligations entailed or even of the progressive or retrograde outlook of any set of metropolitan officials, the conditions on which the flotilla was proffered were in basic conflict with the basic concepts and traditions of the Confucian State. The only condition which might have served to

56. "Times", Mar. 7, 1864, 9f. Letter from Osborn in reply to critical leader in "Times", Mar. 5, 11 d/e. Osborn's witness was, thus, independent of Lay's influence, for Lay had not yet returned - Osborn noting that he was expected in Apr.

57. Cheng, op.cit. p.114. The tenor of Li's comments makes it clear that he did not consider it within the province of Provincial officials to decide whether or not the flotilla should be accepted or rejected.

force the Manchu rulers to accept it (the Manchus were still the dominant influence at the centre of authority) were a) the imminence of their own destruction by rebellion, or b) the threat to British interests becoming so great, that the British Minister would feel compelled to impose the flotilla by "force majeure" upon the relatively defenceless Dynasty.

Both the nature of the confrontation and the non-applicability of the alternative conditions were crystallised during the period June 1 - July 8. In the first three weeks of discussions between the three interests - the Tsungli Yamen members, Wade and Bruce and Lay - the lines of opposition had been drawn on all major issues. Lay was not only prepared to threaten to resign, he was prepared to resign, for the Manchu officials did not consider themselves so weak as to have to rely on foreign assistance in the form the flotilla was proffered. Lay prepared a formal statement of the central issue of the problem, which statement served as a covering letter for his submission, in text, of the thirteen article agreement.⁵⁸ At the same time, he discussed the situation thoroughly with Wade.

58. FO 17/395 No. 178. Bruce to Russell. Nov. 19, 1863. Kung to Bruce. Oct. 25, 1863, enclosing Lay to Kung. June [29], 1863. i) The FO copy, printed in BPP [3271], dates the letter as indicated. ii) The copy, among translations of Kung's enclosures, in Embassy files (FO 230/78 No. 59) gives date of June 22. It is possible that if the Chinese copy were located, it might indicate that it had been received on June 29. iii) Lay, "Interests", p.22 gives June 22.

In Lay's first "apologia", printed late 1864, he cited the urgent appeal to him from Bruce not to resign.⁵⁹ Lay did not cite what was one of the most significant "documents" in the dénouement. This was a letter prepared by Wade for Lay, presumably with Bruce's knowledge. It is too long for reproduction here, but the letter is included as Appendix VII, A⁶⁰ and should be read in its entirety to appreciate the full impact of its significance. In effect, Wade informed Lay that Bruce had all but abandoned hope for the rejuvenation of Ch'ing officialdom and was prepared, if necessary, in order to preserve the maximum strength for the British position, to abandon the flotilla, Lay and the Inspectorate. The issue was no longer whether there were any acceptable terms whereby the flotilla might be "saved", but how responsibility for its disbandment could be engineered; the object being to place as much of the onus on the Ch'ing Authorities as possible in order to prevent intolerable damage to British prestige and to avoid pecuniary liability. Lay's formal letter of June 22 and Kung's statement of the alleged Lay-Hart agreement of July 8, consequently, represented the set and inflexible positions on both sides.

The special circumstances that influenced the course of developments between Lay's return from England and his dismissal contributed to placing him and his "cause" in the most vulnerable position in the three-sided juggling act. Firstly, Lay, never strong in personal

59. Lay, "Interests", p.23.

60. "FL" Wade to Lay. June 23, 1863. Another letter from Wade (in England) to Lay, Oct. 25, 1863 is included as Appendix VII,B. It did not, obviously have any bearing on the developments since it was not received until Dec. 25, 1863, but it does indicate an area of concensus.

following, appears to have "lost" Hart very early on. The only references to his participation are to one occasion at Shanghai and the Lay-Hart "agreement", which Lay so emphatically repudiated. Wade left Peking early in July, which appeared to have the effect of pushing Bruce closer to his peers, the representatives of the Treaty Powers, than to his compatriots. The full effect of the Tseng-Li consolidation had transformed the structure of officialdom at Shanghai - Lay's bailiwick - so that most of the officials over whom Lay had exerted some influence had been cashiered or transferred and replaced by men loyal to the new power. Hst'eh Huan, the lone survivor, had accepted the "patronage" of the new group and no sooner had Li and Lay reached their "impasse" in May, 1863 than Hst'eh was sent to Peking, where, as Li's spokesman and member of the Tsungli Yamen, he became one of the Yamen's most implacable obstructionists.⁶¹ Lay did not have a single Ch'ing official to support him.

Secondly, on matters related to the attitudes of British officers actively engaged against the Taiping, the responsible ones - such as Brown, Gordon, etc., - while prepared to dot the "i's" and cross the "t's" of all the pitfalls that Lay could define with respect to questions

61. Lay, "Interests," pp. 27-30, which gives Osborn's over-dramatic account of one of the interview sessions. "Vide" also "E/B" Bruce to Russell. Private. Feb. 2, 1864. Enclosing Hart to Bruce. Jan. 14, 1864, "in extenso" as Appendix IX, B.

of status and position, were nonetheless soldiers first and foremost. Gordon, in particular, despite the practical, "moral", and "political" problems he encountered, periodically devoted himself to what he understood to be his primary duty. His results, on two occasions, undermined Lay. Gordon secured a series of minor, but impressive victories, against some rebel strongholds early in June. During the first part of October, Gordon was engaged in negotiation for the surrender of Burgevine and a contingent of foreign adventurers who had joined the rebel forces at Soochow.⁶² These two events coincided with periods when Lay, joined by Osborn in the later period, was most forcefully pressing the Tsungli Yamen members. The news of these events, on the successive occasions, made his position even more untenable.

Thirdly, Lay would never have scored very highly in a popularity contest held by the foreign community in China. As the press reports of the RGS meeting and "Blackwood's" articles reached China, the ideas and proposals credited to Lay (not so much his analysis of the deficiencies of the régime) aroused more of ridicule than of apprehension.⁶³ To these,

62. BPP [3295] LXIII "Papers Relating to the Affairs of China". (China No. 3, 1864) (London 1864) for reports from Consular officers. Negotiations for surrender commenced Oct. 8. About half the force was released on Oct. 15, but Burgevine and the rest were detained until Oct. 19. For a curious interpretation of these developments and the direct relationship on flotilla discussions, "vide" "NCH" No. 701. Jan. 2, 1864, pp. 2-3. "Retrospect.....1863"

63. Especially "China Mail" No. 939. Feb. 12, 1863, and "NCH" No. 656, Feb. 21, 1863, p.30 and No. 679, Aug. 1, 1863, p. 122.

shortly after his return, was added the almost unanimous hostility of the mercantile sector, for the Blue Book, which included the injudicious indictment in his 1862 memo to the F.O., was circulated and openly publicised.⁶⁴ There was no need for either the Ch'ing Authorities⁶⁵ or Bruce to fear repercussions from a Lay following.

Finally, there is no positive evidence that the manoeuvre was premeditated, nor for that matter, was there any shred of evidence that precautions were necessary, but it was the fact that almost ten days elapsed between Osborn's departure from Peking and the transmission to Lay of his notice of dismissal. At this last moment, Lay was in his public rôle, totally isolated;⁶⁶ the masterless servant. Lay, in his particular dual rôle, had become superfluous, The enigma was not solved, simply shelved.

There must be two postscripts to this terminal period in Lay's China career, both related to the flotilla project. One is customary in an analysis such as this, though certainly immaterial and of questionable historicity: ascription of an hierarchical pattern of causal

64. "China Mail" No. 963. July 30, 1863, p.122. "The...address refers to the awful Lay Memorandum, which we alone of the Press in China had the courage to publish."

65. Cheng, op.cit. p.114. Li, at least, was aware of the antagonism of the foreign community towards Lay.

66. The one bright spot during this period may have been the announcement of his being awarded the C.B. The list appeared in "LCE" V. June 26, 1863, the printed notice thus probably reached Lay before Russell's notice: "FL" Russell to Lay, May 25, 1863. Lay marked on cover "Ansd. Sept. 5, 1863." "Vide" also Appendix VII,C.

factors; i.e., who was most to blame? The other is material, for the subject matter dealt with was an integral part of the flotilla project; the settlement of costs subsequent to the decision to disband.

No attempt will be made here to evaluate the claims of accusers and defenders.⁶⁷ These are all compounded of truth, distortion and absence of knowledge - feigned or otherwise. Suffice it to say that most of the odium adhered to Lay for the longest period of time. The one person, who received kudos from all sides, was Osborn (though there was the occasional suggestion that he was out of his element in delving in "politics" and became too easy a dupe for Lay). The one person who received the least attention and who, on the basis of the evidence, deserved as much censure as Lay, was Robert Hart.

Hart's was the vital link in the communications chain. Even when allowances are made for the pressure of his responsibilities, for the muddledness of his thinking, for the delays in exchange of correspondence, for his illness and for Lay's overbearing attitude, it is nonetheless true that he had been as negligent in carrying out thorough consultations - on all sides - as Lay.⁶⁸ He conveyed impressions which were erroneous, because he did not himself understand the implications of his commitments, and he made promises which he could not fulfill.

Censure of Bruce is warranted on different grounds. He understood

67. The most balanced early appraisal appears to be that contained in Michie, "Alcock" I, pp. 389-390.

68. "Vide antea" n. 49.

the situation almost from the moment Lay arrived in Peking - that he had not grasped it earlier is but a relection of his failure to do his "homework" properly. Fully aware of the limitations of his real authority, Bruce, however astute his strategy, refused to acknowledge the responsibility of his position until it was forced upon him. Undeniably the strategy worked to his advantage, though until the last, there was no assurance that it would. Bruce had self-contradictions to hide and ambivalence to disguise and Lay's irascibility was as salt to an open wound. But the unscrupulous "ad hominem" condemnation which Bruce employed to enshroud Lay when his dismissal was indicated was a demeaning gesture.⁶⁹

Bruce's "superiors", the politicians in London who aided and abetted Lay and Osborn, were no less remiss than he in keeping the eye of unpleasant reality blindfolded, while staring through the eye of wishful thinking. The flotilla, Lay and perhaps even China, were but

69. Even before he sent his first official despatch on the disbandment decision, FO 17/395 No. 168, Bruce to Russell, Nov. 9, 1863 (erroneously dated "November 19" in BPP [3271]), Bruce had prepared a vicious attack on Lay on Nov. 6, addressed to Elgin, and enclosed in a private letter to Elgin, under date of Nov. 8 ("E/B") stating "I send you a long letter about the flotilla, and I beg you to make use of it in England..." (By the time it reached India, Elgin was dead, but it was forwarded to Russell in any case). On Nov. 9, Bruce wrote privately to Russell and enclosed a copy of his Nov. 6 (P.R.O. 30/22/50). There are two added points about this letter. i) Bruce notes that "[Lay's] day of usefulness in China is over". ii) Having read both letters (6th & 9th), Somerset wrote a lengthy note on the latter pinpointing the weaknesses and inconsistencies of Bruce's case.

Burlingame's letter on the subject ("CMC" VII pp. 62-66 quoting "Rec. of U.S. Dept. of State. Desp. China, vol. XXI...No. 56, 7th November 1863...") contains a number of distortions, but is a much more judicious presentation than Bruce's.

savouries in the cauldron of British diplomacy. The dross of war and rebellion could not, however, be transmuted into the golden fleece of reduced budgets and expanded trade through the diffidence and inconsistency (political opposition and public opinion notwithstanding) primarily characterised in the operations of the Foreign Office. In the present context, however, while Government spokesmen were incapable of admitting their own errors (and indulged in the time-honoured past-time of blaming the heathen), without exculpating Lay, they gave both him and Osborn their due as bold and intrepid, if unsuccessful, visionaries.

These criticisms do not add up to an exoneration of Lay. He did misrepresent and, to that extent, mistake his position. Defective in character, deficient in personality, fundamentally "unpolished" and inexperienced in politics and diplomacy, he was the chief architect of his personal undoing. He may have had the most acute understanding of the nature of the Confucian state as it existed in the late 1850's and '60's, but he lacked a depth-perspective of the larger spheres of time and space. Though he was the exponent of "large ideas", he lived by small ones. He did not resign. He did seek to restore his personal credit with the Ch'ing officers, by attempting to transfer financial liability from their shoulders to those of Bruce, while he was privately charging them with sole responsibility for the breakdown of the project.⁷⁰

70. Contrast Lay, "Interests", pp. 31-32, with FO 17/404, Lay to Russell. Nov. 10, 1863. [BPP 3271].

An examination of a wide cross section of the evidence must, nevertheless, lead to the conclusion that insofar as the flotilla scheme was concerned, he proceeded step by step on the assumption that the conditions he stipulated were being accepted and acted upon. On this ground, at least, he is entitled to relief from total condemnation.

This first postscript cannot be concluded without reference to the responsibility of the Ch'ing Authorities for the "fiasco". It is, perhaps, a moot question whether the blind leading the blind ought ever to be held responsible for infractions of the rules set by the all-seeing. Of course, the "all-seeing" were no less "blind", but they had the presumption to seek to impose their conceptions on victims chronically under duress. As in the case of all analogies, this one should not be pushed too far. The Ch'ing Authorities were not fools. Several of the Chinese provincial officials were fully alive to the difficulties that would arise in any attempt to incorporate an organism, such as the proposed flotilla, into the Confucian state. The metropolitan Manchu officials involved were not completely unconscious of the nature of the organism. However, whether from over-confidence, obscurantism, or language difficulties, they believed they had "managed the affair" in a way which would secure their control in a setting familiar to them. When the reality of the confrontation proved otherwise, they had the fortitude to refuse ratification and when sufficiently relieved of duress, the courage to take the initiative of outright rejection of the flotilla. They could hardly be blamed for dissimulation in the case of Lay's dismissal.

If any hierarchical pattern of causal factors is valid, it is implicit in the order of the preceding presentation. The positions of the home politicians and Lay might be inverted as well might those of Hart and Bruce. If there were a guiding principal^{le}, it would be that the responsibility of the initiators takes precedence over the responsibility of the seconders.

The second postscript concerns the settlement of costs for the flotilla. The subject is material because new evidence has been uncovered which permits a very close estimate of the final distribution of costs,⁷¹ because more cogent evaluations are in order for some of the old evidence and because the question of costs is germane to the interpretation of Lay's rôle.

The cost figures presented here are represented exclusively in pounds sterling, although several kinds of currency entered into the transactions. Details of expenditures and reimbursements will not be referred to except for a few items of special interest, and by the same token problems such as minor exchange gains and losses; minor discrepancies

71. FO 17/492 and 493 appear to have been separate files kept during 1864-1867 exclusively for matters concerned with the financial settlements of the flotilla. FO 233/85 (Misc. 1864-1873) contains a full set of the accounts settled by Lay in Jan. 1864. FO 228/361. (Misc. Naval & Mil.) Contains Osborn's accounts through 1864. There is some miscellaneous private correspondence on the subject in PRO 30/22/50 (Private to Russell) for 1865-1866. FO 83/2251 provides new data. There are occasional references in FO 17/419, 442, 467 and P.R.O. 30/22/26. BPP [- -] XLVII. Accts and Papers. Supplementary Estimate - 1867, is not new, but completes the account.

in balances carried forward, etc., will be ignored. As the transactions and accounting were spread over a period of five years (1862-1867) and as four interrelated, but not integrated, sets of accounts were kept - Lay's original accounts, Inspectorate accounts, Osborn's force repatriation accounts and British Government accounts (Bombay as well as London) - there are some unreconciled balances. Since the total of these amount to less than £10,000 out of an aggregate of approximately £445,000, for general purposes, these can also be disregarded.

The distribution of costs falls into two principal categories:

a) costs for which H.M. Government assumed absolute liability; the vessels, ordnance stores, machinery and supplies, reserve marine equipment, etc., and b) costs ultimately borne by the Ch'ing government; maintenance, wages and salaries and repatriation (including three months' severance pay) for the force, and special considerations to Osborn and Lay. Osborn expedited the repatriation of the force and his accounts were settled under this head by the Summer, 1864.⁷² The inability of H.M. Government to resolve problems of disposal of the vessels for two years, followed by budgeting difficulties,⁷³ delayed the final, and largest, reimbursement to the Ch'ing government until mid-1967.

As indicated, the aggregate disbursed by the Ch'ing government was

72. FO 17/492.

73. Esp. FO 17/493. Memos by Russell (then Prime Minister) and Clarendon (then For. Sec'y.) May 30, and June 2, 1866 respectively.

about £445,000. Of this amount £45,000 did not enter into the general accounts. It was a reserve based on an initial estimate of repatriation expenses. It was remitted to Lay in England and the full amount was returned by him.⁷⁴ Of the remaining aggregate, £400,000, unused funds and proceeds from sales of ordnance and machinery in China⁷⁵ totalled approximately £22,000 while payments on account of vessels and stores sold in Bombay and London, remitted to the end of December, 1866, amount to about £55,835.⁷⁶ The final remittance from the British Government in mid-1867 totalled £114,276. The bulk of this final payment represented the difference between Osborn's valuation of the vessels and the sums received from the actual sales.⁷⁷ Osborn's valuation for seven vessels (he sold one himself and applied the proceeds to the repatriation account) was higher (£152,500) than the cost value (approx. £147,000). Even so, until the bottom dropped out of the market when the War Between the States ended in the Spring of 1865, the demand value was estimated to be much

74. In 1864 ("Interests") Lay specified £45,000; in 1868 ("The F.O.") he mentioned both £40,000 and £45,000; in 1893 ("Opium") the amount had been reduced to £30,000. He may have been allowing for inflation.

75. FO 228/361. Some were sold at Chefoo and some at Shanghai. At the latter place, the sales were all to H. Macartney for his Shanghai Arsenal. For details and the benefits derived see D.C. Boulger. "The Life of Sir Halliday Macartney K.C.M.G." (London, 1908) pp. 124-131.

76. FO 17/493.

77. "Ibid". Hammond to Treasury. Feb. 26, 1867. The 1867 Supplementary Estimate figure ("vide antea" n. 71) had been £101,300. The FO arrived at its own figure by a duplicate payment for one vessel and by reimbursement for India Gov't. charges against another which, under the circumstances, also represented a duplicate payment.

higher. Nevertheless, the total re-imbursements amounted to approximately £192,101, leaving the Ch'ing government with a maximum net deficit on the flotilla account of £207,900.

This deficit figure can be cross-checked in two ways. Firstly, on a visit to the F.O. in 1866, Hart estimated that the loss to the Ch'ing government would eventually be between £100,000 - 200,000⁷⁸ and Hart, who, consistently after 1863, cast Lay in the villain's rôle, was not likely to underestimate the cost of the failure. Secondly, the actual cost figures roughly approximate the outlay - less reimbursement figures. Detailed expenses for non-recoverable goods and services to November 1, 1863, totalled about £111,000; costs for the vessels' return to England, about £14,000; discounts on sales of non-ordnance surplus supplies, about £6,000; force repatriations, about £68,000 (original estimate was £120,000⁷⁹); special allowances to Osborn (£3,000) and Lay (£6,833⁸⁰), about £9,833. These figures total £208,833 in the expense accounts.

The re-evaluation of "old" evidence is concerned with a more careful

78. "Ibid". End of a long memo by Alston, dated May 28, 1866. He quotes Hart who "was at the Foreign Office last week..." Estimates of the cost have ranged from Hart's, to £250,000 by Wade (P.R.O. 30/22/50. Wade to Russell. Private. June 6, 1865), to £550,000 by Morse, "Submission" p.42, to "not much less than a million sterling" by S. Wells Williams, "A History of China", Rev. ed. by F.W. Williams (London, 1897) p.342.

79. FO 17/492. Osborn's accounts of Dec. 20, 1864.

80. "Vide ~~postea~~" pp.450-453. There is some disagreement whether Osborn's £3,000 was a gratuity voluntarily offered or an amount recommended by Bruce to re-imburse him for managing the disbandment of the vessels and force.

appraisal of some of the transactions covered above. The differential cost to the British Government, as noted, was above £114,000. The Government bore this cost because it refused, on political grounds, the immediate sale of any of the vessels in the open market,⁸¹ because the Admiralty refused to purchase any of the vessels except at unreasonable figures and because the delays, before permission was finally granted, resulted in the deterioration of the vessels. Had the vessels been offered in the open market in 1863-64, the net deficit to both H.M. Government and the Ch'ing government would, in all probability, have been appreciably less. Both governments accepted the situation which dictated the policy - but not the inordinate delay - and, consequently, at no time was the responsibility for this loss factor held against Lay and/or Osborn by the British officials in London or the Ch'ing officials in Peking.

The exchange factor should also be examined carefully in determining the absolute figure for the Ch'ing deficit. Actual figures for all transactions are no longer available, but what can be substantiated is that all the exchange costs - differential between real as against nominal rates for currencies converted to pounds sterling - and discounts

81. FO 83/2251. Law Officers to FO. May 21, 1864, ruled that Osborn and Chinese Government had legal right to sell vessels "as to when, where or to whom..." they desired. When HMG prevented sale as a matter of policy (recorded as a Cabinet decision by Russell - FO 17/492. Memo. May 12, 1864) HMG assumed responsibility for disposal and full indemnification.

on pre-maturity collection of six months' sight bills, are included in the Ch'ing deficit figures, but the premiums on sterling re-imbursements to China are not included in these figures. If the requisite adjustments were made, the absolute figure of the Ch'ing deficit might be reduced from between £20,000 - 30,000. It would still be a sizeable figure, but not nearly so awe-inspiring.

The one transaction which has been distorted beyond all reality relates to the sum designated as Lay's termination settlement. By a careless reading of Bruce's despatch to the F.O. announcing Lay's dismissal⁸² and by Bruce's apparent failure to read the translations of Kung's communications before he wrote his despatch, the settlement has been misrepresented. Kung's original notices to Lay and Bruce concerning Lay's dismissal stated that Lay was to be allowed four months to settle the flotilla accounts and that he was, as a manifestation of the Chinese government's "boundless liberality....to draw your salary [@ 1,000 tls. /mo.] up to the end of the four months to which you are limited"⁸³

82. FO 17/395 No. 183. Bruce to Russell. Nov. 27, 1863 (BPP [3271]).

83. "Ibid". No. 187. Bruce to Russell. Nov. 27, 1863. (BPP [3271]) Enclos., Kung to Bruce Nov. 15, 1863. There is strong evidence to suggest that Lay's dismissal had been decided on Nov. 5. i) "Vide antea" n. 69 for Bruce's and Burlingame's comments of Nov. 9 and Nov. 7, respectively; ii) The English translations of notice to Lay on his dismissal and to Hart on his appointment to succeed are undated; iii) The initial entry for Kung to Bruce Nov. 15 in FO 230/78 No. 62 which contains the copies of English translations of the Chinese documents, dated this communication as November 5. The numeral was crossed out and replaced by "15".

On the one hand, Lay must have objected to the financial settlement and, on the other, he did indicate that he had every intention of settling his accounts and leaving China well before the expiry of the four-month period.⁸⁴

According to the contents of Bruce's despatch, the government reconsidered its settlement terms and (from the context of the series of documents), a new offer was made between November 15-20. These terms were: i) a doubling of salary (to 2,000 tls. /mo.) retroactive to the date of Lay's return to Shanghai on May 1, 1863 to continue through the four-month period to Mar. 15, 1864; ii) a 3,000 tls. /mo. allowance for "expenses of his establishment during his residence at Pekin"; iii) "a gratification" of 6,000 tls. "on leaving their service". If these figures were computed as H.B. Morse⁸⁵ and S.F. Wright⁸⁶ subsequently did, as gross payments, the total does look exceedingly generous. Thus, the total salary amounts to 21,000 tls. (10½ months @ 2,000 tls. /mo.), the Peking expenses to 15,000 tls. (actual five-month period of residence @ 3,000 tls. /mo.) and gratuity to 6,000 tls. The grand total is thus 42,000 tls. or converted at the nominal rate, £14,000.

84. FO 17/395 No. 187. op.cit. Kung to Bruce. Nov. 20, 1863 (FO 230/78 No. 63. Nov. 20). For the intercession of Burlingame and his colleagues see "CMC" VII, pp. 68-69. "Rec.....U.S. Dept. of State. Desp., China, vol. XXI, No. 58. 23rd November, 1863". Burlingame, it may be noted, does not specify a single date.

85. "Submission", p.46.

86. "Hart", p.250.

In the first place, however, Lay did not accept this settlement and, in the second place, he would not have agreed to the classifications. On November 20, a week before Bruce's despatch, the same day Lay submitted his full interim account and the day before Lay left Peking, Kung informed Bruce of the terms of the settlement.⁸⁷ i) Lay was to receive a lump payment of 8,000 tls., not calculated on any monthly salary basis, but "to be paid out of the sum hitherto allowed for the expense of the residence of the Inspector-General at the capital", which residence was to be considered terminated as of November 15. "In addition...the Prince will still further show his generous consideration for Mr. Lay by giving him a sum of 6,000 tls. to defray his travelling expenses to England." Lay was, as implied, allowed a sum to cover "the residence of the Inspector-General at the capital" and he did charge 6,000 tls. for this item in the final accounts he submitted to Hart.⁸⁸

By the most liberal interpretation, therefore, the value of Lay's terminal settlement would be i) "excess" salary, 6,500 tls. (1,000 tls. /mo. 1 May - 15 Nov.; Lay would probably have claimed he was entitled to this, since he drew only half-salary during the two years he was on leave, even though he worked a good part of the period; ii) severance pay, 8,000 tls.; iii) repatriation, 6,000 tls. - most of which, incidentally, would have been absorbed to defray actual repatriation

87. "Vide antea" n. 84. Underscoring added.

88. FO 233/85. Lay's accounts.

expenses. This "grand" total amounted to 20,500 tls. or, at the nominal rate, to just over £6,833. Lay did leave China a moderately prosperous man, but his wealth was accumulated by modest living and judicious investments in real estate afforded with savings from a liberal salary⁸⁹ rather than as the result of any excessive generosity on the part of his Ch'ing employers to cover his termination.

Finally, it has generally been alleged that the financial loss, invariably ascribed to Lay, entailed in the breakdown of the flotilla project caused extreme embarrassment to the "progressivists" among the Ch'ing Authorities, notably Prince Kung and Wensiang, which, in turn, hampered the efforts of the "progressivists" among the foreigners, notably Hart and the Ministers of the Treaty Powers, to make much impression against Ch'ing obscurantism. The refutation is involved and the evidence in support voluminous. It should be sufficient, however, to establish four principal points. Firstly, on the one side, the amount of actual loss was not cataclysmic. It remained as large as it did despite Lay's and Osborn's efforts a) because, according to their interpretation, the British Government reneged on payment of part of the disbandment expenses and b) because a political decision prevented the Ch'ing government from

89. Lay did not liquidate his property holdings when he left China in 1864. One of the reasons he made a trip to China (and Japan) in 1869 was to attend them. For citation "vide antea" Chapter X n. 136: S.146. Lay's reply of Dec. 30, 1870 to Interrogatory.

selling the vessels at prices well above cost. On the latter point, Kung and Wensiang were more severely embarrassed by the long delay in indemnification repayment by the British Government than by the actual disbandment.⁹⁰ After all, Soochow was recaptured from the rebels in December, 1863, and Nanking fell in July, 1864, without the aid of the flotilla.

On the other side, if Kung and Wensiang were embarrassed, they had only themselves to blame. In reality, it could be argued, the losses sustained in the disbandment of the flotilla were more than compensated for by the continued stationing of a sizeable British naval squadron (which, had the flotilla been retained, would almost certainly have been reduced in numbers⁹¹) on the China coast, at British Government expense, to combat piracy and smuggling.

Secondly, relations between the members of the Tsungli Yamen and the Ministers of the Treaty Powers were more cordial in the flotilla crisis and the immediate post-disbandment period than they had been before. Thirdly, despite the rationalisation of men like Hart and Wade for

90. i) FO 17/492. Bruce to Russell. May 1, 1865 "Separate" [From Washington] enclosing long letter from members of Tsungli Yamen, recapitulating flotilla dénouement. This had been sent to Bruce by Wade in late 1864 or early 1865. (Copy also in FO 17/409 and in "E/B".) ii) P.R.O. 30/22/50. Wade to Russell. Private. June 6, 1865. iii) FO 17/493 No. 32. Alcock to Hammond. Mar. 5, 1866 and Wade to Hammond, Private. Mar. 6, 1866 (mentions a long despatch sent in Feb. 1865), iv) FO 391/19. Wade to Hammond. Private. Aug. 21, 1867.

91. "Vide" esp. Somerset's note on Bruce to Russell. Private. Nov. 9, 1863. n. 69.

their failures to influence Ch'ing progress, in 1867 Wensiang and Kung were at least relatively buoyant. The following views, ironically, were passed on by Wade, who had received them from Hart!

Wensiang said to me the other day, "You will be more anxious to stop our learning in 50 years time, than you now are to make us learn". The Prince the last time I saw him said "What you have been saying is fact. Had you said it five years ago I would not have understood it; three years ago I would not have believed it; but now - without your saying it - I can see it for myself. Only those who think with us are but a few and we must be allowed time and freedom to take the steps which we best know to be most calculated to gain the hundreds of thousands who now oppose us."⁹²

Fourthly, as early as 1869, Hart developed a project for acquiring steam vessels for a "coast guard" service, applying his methods. Three new vessels were purchased, but when they arrived in China they could not be used because Hart was unable to get sufficient funds to put them into service.⁹³

In effect, therefore, Lay's rôle for good or ill, in British relations with China, terminated in China, at least, when his career terminated at the end of 1863. Insofar as any effect he may have had in Britain is concerned, the test came with his publication in December, 1864, of the open letter to Lord Russell, being his "apologia" and a statement of what he believed Britain's policy should be.⁹⁴ Russell

92. FO 391/19. Wade to Hammond. Private. Apr. 22, 1867. Quoting extract: Hart to FitzRoy (n.d.).

93. Von Gumpach, op.cit. p. 275 (footnote 2) quoting "NCH". Mar. 29, 1870. Also "LCE" XII June 17, 1870 p. 537.

94. There was, of course, a private covering letter to Russell: "Vide" P.R.O. 30/22/50. Lay to Russell. Dec. 8, 1864. Russell replied on Dec. 13, 1864. "Vide" P.R.O. 30/22/101.

politely acknowledged it by private letter and most of the press that took notice of it, acknowledged it impolitely. (Both Orders in Council were rescinded simultaneously in the spring of 1864: the first, applicable to Lay and Osborn, for obvious reasons; the second, applying to British officers, as a consequence of the alleged "massacre" of Taiping Chieftains after the surrender of Soochow - the EVA, under Gordon's command, was indirectly implicated in, though in no way directly responsible for, the "massacre"). Lay continued to believe that he had a rôle to play in China,⁹⁵ but no one else, of any consequence, did.

95. Lay's principal effort took place in Jan. 1866. FO 17/462. Lay to Clarendon, Jan. 13, 1866. He applied to succeed Wade, who, he alleged, intended to resign the Secretaryship of Legation. The initial, tactful reply (Jan. 17) was that the FO had no knowledge of the alleged intention. Lay then had a long interview with Hammond on Jan. 18 following which he wrote a defence of his 1863 behaviour addressed to Hammond (Jan. 19). On Jan. 20, Hammond prepared a précis of the earlier interview, in which he had pointed out to Lay the reasons why he opposed Lay's application for any position in the diplomatic service. The memo closed, "I spoke very kindly, as indeed I feel towards him; but I think it would be out of the question to reemploy him in China."

Clarendon's note of concurrence followed immediately and Hammond notified Lay of the decision on Jan. 22, 1866.

Chapter XII

Summary and Conclusions

The study of H.N. Lay's role in British relations with China, like any other similar study, is the product of a selective process. None of the components of the terms of reference has been dealt with exhaustively. There is less need to justify what has not been done in this respect than there is to explain what has been done and to formulate the qualifications that naturally follow as the concomitants of the conclusions that can be drawn from the presentation.

In the attempt to provide a framework that could be considered comprehensive, if not exhaustive, two patterns of evidence, with corresponding analyses, have received primary attention. With respect to one pattern, the effort has been made to concentrate on the conditioning influences which might help to clarify the process of initiative and response that affected the particular individual - H.N. Lay -, and the entities - the British "community" and China. The Introduction, in general terms, and the chapters on the background to Lay's career, in specific terms, established the lines of this pattern. In the succeeding chapters, this pattern became more and more submerged as more complex influences and factors led to the super-imposition of new designs. This, in itself, characterises one of the conclusions about Lay's role to be elaborated later. The entities, the British "community" and China, metamorphosed, however slowly, consistently with the changing pattern; the individual, Lay, changed within the initial simplistic pattern.

The other pattern has been developed as a means of concentration

on selected aspects of Lay's direct involvement in Sino-British relations so as to exemplify the basic characteristics of his role. Lay, with varying degrees of capability and proficiency, became an interpreter "cum" administrator, an interpreter "cum" negotiator (never, in essence, a "diplomat") and, if the term is used loosely, a "policy-maker". From the time his influence first began to be felt during his service in the Consulate at Shanghai, until his dismissal as Inspector-General, he was to a lesser or greater extent attempting to carry on all these functions concurrently. However, none of these functions has been exhaustively described and analysed throughout the chronological account. Had this been attempted, the study - even in the face of incomplete documentation - would easily have run into a number of volumes. Instead, the attempt has been made to define the special features of each function in the context in which that function predominated. Thus, the consulate experience defines Lay's role as interpreter "cum" administrator; the Shanghai Inspectorate and Imperial Maritime Customs system, his role as administrator; the treaty negotiations of 1858 and the flotilla scheme, his role as "policy-maker". None of these, of course, could have been considered comprehensive without some elaboration of the larger context in which the particular developments took place.

This procedure, because it has concentrated on definition of his role, has also served to emphasise areas of controversy respecting interpretations of that role. The tentative evaluations suggested in the different sections will be stipulated more precisely in the conclusions that follow shortly.

There is another "pattern" implicit in the structure of the study

that is explicitly indicated in what may seem to be the supercilious titles for Chapters IV - XI. These titles have been used to suggest that there is a valid - though tenuous - correlation between Lay's enigmatic function as a dualistic "servant" and the underlying problems of confrontation and conflict. Whoever was temporarily master of Lay was temporarily master of the situation. When Lay became masterless, it was not because of the simple reason that one or more substitutes were found to fill the functions he had performed, but it was because no one with his particular attributes and capabilities was any longer required.

The qualifications that follow as concomitants have been all but precisely stated. The focus of the study is on an individual. The development of that individual (perhaps, any individual) was relatively static while developments in the corporate and institutional sense, whether personal (the purely quantitative increase in numbers of similar individuals engaged in similar activities) or impersonal (the metamorphosis of the British "Community" and "China" - regardless of whether the process was constructive or destructive) were relatively dynamic. The relativity here alluded to was not only that applicable to the contrast between Lay and the two environments in which he performed, but it was also applicable to acceleration of change within both those environments.

Another qualification, not previously referred to in this chapter, has to do with the limited attention given to the structure of relations between other "powers" of the occidental politico-culture system and the Ch'ing Confucian system. Although there are, in the body of the study, references to various developments in which some aspects of this

structure have been dealt with, most of the discussion has been indirect and it has certainly never been comprehensive. That this structure was a significant element in affecting Lay's role need not be laboured.

The qualifications with respect to the individual may easily be overlooked. The brief commentary on Lay presented here, combines summary, qualification and conclusion insofar as his individuality is concerned. It must always be remembered that although his China "career" spanned sixteen and a half years (1847-1864), he was but six months past his thirty-first birthday when it was terminated. The positions he held, which in some measure he sought and in some measure had forced upon him, would ordinarily have demanded a high level of competence and experience. As it was, his education, in a liberal sense, was deficient and in a vocational sense, extremely narrow. His experience, while to some extent unusual and to some extent remarkable, was, when viewed in conjunction with the responsibilities of his numerous positions, at best shallow. That he achieved as much as he did with these very real personal handicaps can be accounted for partly by the environment in which he functioned and partly by other traits of his personality and character.

Insofar as the environment was concerned, his handicaps were initially obscured or discounted because the important attributes he did possess were at a premium. As the responsibilities became more demanding and as other foreigners attained adequate proficiency in language facility and administrative experience, his deficiencies became more pronounced.

Insofar as his traits of personality and character were concerned, it is possible to detect in his career his efforts to mould himself, to the best of his ability, in the image of his father. His personal

commitments were as nearly identical as they could be. He was a religionist whose career was dedicated to the promotion of progress through the medium of public service. Even if it were conceded that the flotilla project stirred prospects of his emulating his "great ancestor", this is far from conceding that his ambition constituted an insatiable lust for wealth and/or power. Rather, the ambition for fame and fortune that he displayed throughout his career, and the energy and aggressiveness he generated in the pursuit of them, were not, in the light of his youthfulness and the disabilities connected with his father's death, inordinately abnormal. His initial desires for status and fortune were converted (however misguided the tactics or rationalisations) in the latter stages of his China career, into a belief that they were the necessary accoutrements of his position.

Positively, it can be demonstrated that in part, at least, his views on this score were sound. Considering the establishment over which he was to have direction (without reference to the degree of executive discretionary authority he believed he ought to possess), the status and "fortune" he sought in relation to the milieus of both the foreign community and the Ch'ing structure were not unrealistic. But that H.N. Lay should be accorded the distinction and the emoluments was but a reflection of the incongruity of his being invested with the position.

Negatively, there is no evidence that Lay ever violated the rigid terms of his appointment or exploited his position for his personal advantage, despite the fact that there was little to prevent him doing so had he been inclined that way. He had a reputation, on the contrary,

for dealing with severe harshness towards anyone against whom the slightest irregularity could be substantiated. He was also what, in modern vernacular, would be called a "loner". His seeming inability to elicit or to offer ties of personal attachment or loyalty not only makes any suggestion that he was capable of mounting a programme that might be directed at building a personal "empire" incredible, but this condition also, in fact, left him in a chronically vulnerable state throughout his career. The only personal weapon in his armoury was the threat of his personal resignation. While he was supported, it was for the cause he epitomised and not support for him as a person.

The one possible exception that may come to mind is his relationship with Captain Sherard Osborn. But the fact that Osborn was above all else famous as a man of principle "proves the rule". He was as much Lay's choice as anyone's. That Osborn could come through the flotilla fiasco with enhanced prestige and that he could remain a determined defender of Lay, must surely, to some extent, indicate the limited nature of Lay's ambition.

There is no intention here to convert Lay's weaknesses into virtues, but the discussion is relevant because his detractors have often tended to convert these self-same weaknesses into vices. His most serious weakness was his self-righteousness which led him, always, to analyse and interpret facts and events to fit the cause he happened at any given moment to be supporting and which led him, frequently, to employ questionable means. As an ordinary man, more could be said to his credit than for most. His role in China, having been an extraordinary one,

everything about him was and has been exaggerated. What was the nature of the extraordinary role which this ordinary man attempted to perform?

At this point there is the strong temptation to continue with lengthy - and with what would undoubtedly become tortuous - elaborations of additional qualifications and definitions. This must be resisted for any number of obvious reasons, the most valid of which is that if the main presentation has been adequately formulated, it should be unnecessary. Since interpretations are the essence of research, however, these must be positively summarised.

In their simplest terms, Lay's positions as a representative of the British presence were twofold; to interpret, literally and figuratively, for the most influential Ch'ing Authorities with whom he could communicate, the British interest in expanded intercourse; to demonstrate, both to the foreign community-at-large and to the Ch'ing Authorities, the mutual advantages that could be derived from the effective application of occident-designed, rationalised, centralised administrative organisations and practices. His function as an imposed, as a self-appointed and as a passively accepted representative of the Confucian state interest were: guarantor (first locally at Shanghai and then, generally, for the other treaty ports) for the transmission of a sizeable revenue; buffer between Ch'ing officialdom and British officialdom until 1859; agent for the acquisition of modern armament to be used in the Taiping suppression campaign; pseudo-consultant for the Tsungli Yamen. Viewed in juxtaposition, while the two sets of functions were not necessarily mutually exclusive, neither were they necessarily parallel or convergent.

The tangible results directly attributable to Lay's activities and influence were, in relation to the notoriety he gained, very few. His

most significant contribution was made in his capacity as interpreter "cum" administrator. His consolidation of the foreign Inspectorate, administratively, politically and legally, was his major achievement. Nonetheless, however much credit he may be entitled to on this account, it is to be noted, firstly, that the Inspectorate survived these early years mainly because the British plenipotentiaries were able, in the years from 1854-1862, gradually to convince the Government in London that it was a necessary adjunct to British diplomacy; secondly, that its extension was provided for as a part of a treaty settlement that was imposed by armed coercion; finally, that when it was "officially" recognised by a faction of the metropolitan Ch'ing Authorities, it was not in consequence of any direct influence exerted by Lay.

Two other complementary "contributions" can be recorded that, in fact, were the results of Lay's connection with the Inspectorate system. The first was that despite the thwarting of their ceaseless efforts to retain special concessions or to increase their privileges at the expense of the Inspectorate, the largest segment of the British mercantile community (which in time included almost all the most responsible houses) accepted the system. In the course of this acceptance, and by virtue of it, commercial intercourse was facilitated. The second was, that largely as a consequence of Lay's consistently (from conviction) and stubbornly (from pride) supporting derivative concepts of the status and authority of foreign "inspectors", Lay was responsible for some curtailment in the status and authority of the consuls at the treaty ports. To some extent this facilitated the assumption by the Embassy of the political and judicial prerogatives which had, because of the conditions that had prevailed in

China, been partially delegated to the consuls. To some extent, this "contribution", even though the beneficiary was the foreign Inspectorate, restored to the Ch'ing government a measure of authority which it had relinquished by default.

Here again, the case can be overstated. Lay had made his opposition to the setting up of mixed tribunals, at the treaty ports, for the adjudication of customs cases absolutely clear, threatening to resign should Kung consent to the proposal.¹ The very next day after Bruce received the official notification of Lay's dismissal, however, he informed Russell that he had formally recommended to Kung that such tribunals should be introduced. His remarks to Russell included the following.

Mr. Hart, who has had much practical experience, during the last two years, in dealing with such cases, is favorable to the proposal on account of the publicity which will attend these investigations, and of the benefits to the Customs-house, of its being relieved from the charge of exercising an arbitrary power in such cases. Mr. Lay, unfortunately, did not seem to appreciate these advantages, and wished that the investigation should be conducted before the Commission [sic] of Customs alone, a course of proceeding which would be totally unsatisfactory to the parties interested, and would recognize, in a Chinese Authority, a certain judicial power in dealing with foreigners, which it is objectionable to admit.²

1. "Vide" Chapter IX p.324, n.14. (App. VI,A.) For the specific threat to resign, "vide" Lay, LR. Lay to Hart, Jan. 27, 1862. Lay's first references to the subject in his correspondence is in his letters to Hart of Jan. 8 and to FitzRoy of Jan. 9, 1862.

2. FO 17/395. No. 177. Bruce to Russell, Nov. 16, 1863. Russell had been writing privately to Bruce earlier in the year (E/B. Letters of Feb. 23 and Apr. 10, 1863) recommending that he ease up somewhat in his curtailment of consuls' powers. This was in connection with control over the actions of British nationals and it was only to apply selectively; i.e., for senior and responsible Consuls.

To speak of Lay's "contribution" to the Ch'ing government in his capacity as interpreter "cum" administrator in other respects, is to speak with a forked tongue. During his tenure, at least, while the Ch'ing Authorities may have been made aware of the fiscal and diplomatic advantages of the Inspectorate system, this awareness did not lead to the adoption of any of its organisational or administrative features in any other branch of the Ch'ing government, whether at the provincial or the metropolitan level. The point is not so much that the adoption might have facilitated British relations with China in other spheres of intercourse, but that Lay's efforts were ineffectual in conveying to the Ch'ing Authorities the essence of the "mutual benefit" concept propagated on behalf of British interests.

As for other tangible results directly attributable to Lay in his other capacities, these must be basically defined in negative terms. His role as interpreter "cum" negotiator may have facilitated some forms of intercourse, but in actuality he was being miscast by both sides. Each was using him as a sounding-board. To the extent that he had any advice to offer, it appeared to be "accepted" by one side or the other because it coincided with positions formulated as the result of previous definition of interest, or it was not accepted at all. Even if, for example, there were a basis for giving him credit for a decisive influence in the negotiations at Tientsin in June, 1858, the glaring fact remains that the Treaty signed at the time and the Tariff and Rules negotiated later that year at Shanghai, were not accepted by the Ch'ing government until the Allied forces were required to reopen hostilities and to occupy Peking

in 1860. If his influence was decisive, then he must be charged with misguiding both sides. If it was not decisive - which is what the evidence discloses - then his role was a secondary one. That efforts were made to make it appear that his role was more significant (and that he permitted himself to be deluded by these efforts) is a different problem.

The preceding conclusions as well as the evidence in the principal portion of the study point to the last of this group of conclusions. However he may have interpreted his own functions, he was not a policy-maker. He tended to confuse the function of policy-making with the function of policy-implementation. Although he obviously possessed more than ordinary intelligence and an unusual ability to analyse general problems, his inability to understand and his refusal to grasp the "realities" of the everyday environment in which he functioned contributed to this confusion. In the one major activity in which he could exercise a relatively independent discretion in policy-making - the flotilla scheme - the enterprise turned into a fiasco. Within the framework of the phantasy, the structure was valid, coherent, sound; but it was a phantasy. That others indulged in their own forms of phantasy in connection with the flotilla scheme is beside the point, but the disbandment of the flotilla and Lay's dismissal seemed to be the indicators that all those concerned with British relations with China had decided that the days of phantasy were over.

The foregoing, with some stretch of the imagination, may be considered the specific conclusions related to the principal features of Lay's role. A few general conclusions of a still more provocative nature may not be

out of place.

The yardsticks customarily employed in evaluating or interpreting developments in mid-19th Century China are the circumstantially definable interests of the contemporaries of the period and/or the "large", indecipherable ideas of the 19th (or, frequently, of the 20th) Century. Alternative yardsticks may be just as narrow or just as indecipherable, but perhaps by adding to the range of perspectives, a longer measure of comprehensiveness or comprehension, may be added. Thus, while the final conclusions that follow may go beyond the limits of the terms of reference of the study and may even violate some of the canons of historical research, they are part of the product of the effort that has been put into the orthodox preparation of the study.

Lay's role had a basic significance distinct from the individuality of the man and the evaluations of his successes and failures. It was that in the state of conditions of intercourse and relations that prevailed at mid-century, "interpreters" in the more comprehensive meaning of the word, were required. Lay's inadequacies and seeming failures were a characteristic of the probings - on both sides: one active, one passive - for interpretation and comprehension. There were "interpreters" active in various capacities, but Lay's unique role was that for a number of critical years he was one of the principals in a direct, intensive and sustained person-to-person dialog on a "system-to-system" level. The significance of the dialog was that, all other considerations apart, it contributed to the development of a mutually intelligible language of communication. The process itself encouraged the attempts to get more

from it than could be expected from it: hence the enigma of Lay's dual role. Whether a different individual might have served as a more effective instrument is a hypothetical problem. One need not add fruitless speculation to one's list of sins of commission.

The final general conclusion to be included in this study pertains to another intangible effect of Lay's influence. It may be suggested that because of Lay's propensity to commit himself absolutely and dogmatically to the interests of each of his Masters (as he understood those interests), he forced each of them to re-appraise and re-define the nature of those interests in more explicit and more specific terms. Lay's commitment, being more than an intellectual exercise, since he was generally as uncompromising in his actions as he was dogmatic in his views, also contributed appreciably to forcing both Masters to crystallise and, subsequently, to institutionalise limits of confrontation, accommodation and disengagement. There was no war to establish absolute pre-eminence of one system as against the other. There was to be accommodation (less aggressiveness on the "British" side, less passivity on the Confucian side) in the protection of the vital interests of both sides. There was to be disengagement (as a matter of policy, at least) in those areas where intercourse, as an extension of interests, were recognisably incompatible. Bruce took particular care to brief Sir Harry Parkes, when he returned to China, on the "new look" in policy.³

3. E/B. Bruce to Parkes, Private. Jan. 2, 1864. (FO 17/407. No. 9. Bruce to Russell. Jan. 13, 1864. Enclosure.)

In fact, as our interest in China is trade, and as trade is certain to increase, provided China enjoys internal and external tranquillity, my opinion of the policy to be pursued here differs materially from the views of the school of headlong progress, of which men like Lay and Osborn may be considered as the chief exponents. We do not wish to revolutionize the country, for I am convinced that we are more likely to get on with a Manchoo than with a purely Chinese dynasty. We do not wish to turn China into a second India, even if that were possible, and we should not be satisfied were any other foreign Government to make the attempt. Projects such as Railways and Telegraphs which would give to foreigners a landed interest in the interior of China, would lead to most serious complications unless the Government of China takes the initiative in such enterprises, and unless they are in the main Chinese concerns, and exclusively within Chinese jurisdiction. I do not look to railways as likely to be of much benefit to foreign trade, which is of far more importance to us than putting money in the pockets of foreign speculators. If they are to be constituted in the hands of foreigners, who will be guaranteed in their rights by Foreign influence, they will embroil us with the native authorities, and their benefit and internal improvements would be outweighed by the obstacles thus created in the way of friendly relations with China. Lay hoped to make China the vassal of England, as representing western civilization in these waters, and to compel her to adopt the material symbols of progress in the 19th century. To suppose that a flotilla and 500 men were a sufficient force for the objects contemplated, and that other nations would have long acquiesced in the inferior position allotted to them, shewed an utter incapacity to comprehend China, or to realize the susceptibilities of foreign powers. My object is to work with the Chinese Govt. & not to supersede [sic] it, on the fallacious assumption that a foreigner is better able to govern China than the natives. I offer them suggestions, I propose novelties; if I can persuade their adoption so much the better. If not, we must trust to time and increasing confidence in us, to do what argument and persuasion are unable suddenly to effect. Progress in this country must be slow in order to be safe; and no course is so calculated to produce a reaction fatal to our interests, and to involve England in responsibilities, with which no lover of his country would wish to see her burdened, as a disregard of the legitimate right of this Govt. to be consulted on questions affecting her interior condition, and the attempt to introduce by pressure, material improvements, which

require a continuance of the same foreign pressure, to enable them to subsist. I shall be very glad to see railways and telegraphs established, if their necessity is felt and admitted by the Chinese. But they ought to be the badge of the progress of the Chinese, not the symbol of foreign domination or influence.

No one can be more conscious of the gaps and inadequacies of "conclusions" than the one who is responsible for them. Yet, it is to be hoped that this study of Lay's role in British relations with China has resolved some of the controversial aspects of Lay's role, has contributed to a more comprehensive understanding of those relations and, at the same time, has added clarification to some matters that have previously been obscure. It may, perhaps, stimulate interest in other lines of research on related problems of the inter-action of the two politico-culture systems.

APPENDIX I

FL Collection: Lay's "guardian" [K. Gützlauff]

To Lay,

March 6, 1849.

The present expedition upon which you enter of your own accord, is of such great importance, that a few words from your guardian will be here at their proper place.

Remember first of all, that unless God in his mercy grants success, all efforts how wisely devised soever will be of no avail. Seek him therefore in prayer and beseech him for his Son's our Lord and Saviour's sake to bless the present enterprize.

Consider yourself entirely at the disposal and under the orders of the Commanding Officer, obey implicitly.

You have entered upon a dangerous, very difficult undertaking, which notwithstanding the previous strenuous endeavours of many others has hitherto failed. You will never get on if you shew the least want of courage and decision, the Japanese ridicule such persons and treat them with contempt. Do not for a moment disguise to yourself the real difficulties, which antinational principles have created but meet them fearlessly.

You are aware of your own position, as the eldest son of a widowed mother, you ought to be her support. An opportunity is given to you to distinguish yourself by zeal and energy, such as perhaps never will offer again, and the prospects of your whole life may be humanly said to hinge on your conduct in the present instance. You have none to recommend yourself but your own exertions, with the blessing of the Most High; if you fail to do your duty, your progress in life will be blasted and you will repine in vain. Your great ancestor who has a name in British History, was never a protégé, but rose to the highest honours by individual exertions. May he in this respect be an example to you.

The principal business in which Captain Glynn will employ your services, will be faithfully and pointedly to translate his ideas.

In all important matters this must be done in writing and the Chinese gentleman who accompanies you will assist you in this department. Whenever anything is official, be careful about the forms, such as you have learnt in the office, and let Chin who is well acquainted with them give it the requisite finish, so that nothing defective in style and expressions may leave your hand. The care you bestow on these things can never be too great.

Whilst strictly guarding against admitting the inferiority of the United States, a powerful Empire, to the Japanese in your terms and expressions and strictly maintaining the equality of officers of both the nations which have been established in China, you must never allow yourself to be outdone in politeness. Be courteous in all your phraseology, and whilst you strive to be exact, never forget that suavity of expression, which will not fail to make the Japanese favourably inclined towards you.

On the other hand give with faithfulness the decided sentiments of Captain Glynn, be precise when he speaks in that tone, which becomes him as a messenger from a great and powerful nation, never abridge the terms of national dignity and national rights, and truly convey a detail of the consequences, in which the Japanese Government will be involved, if they persevere in their hostility against all those who approach their shores with peaceful intentions. There must be no shrinking, no mincing, the plain truth must be told in proper language. I should suggest that of all the important conversation you hold in writing, you should keep a copy.

The Japanese officers you will meet, will be full of subterfuges, and endeavours to evade the subjects, which give rise to the expedition. For this purpose they will use the most unaccountable and unwarrantable means.

The objects to be gained, are the restoration of American ship-wrecked seamen, and an assurance on the part of the Government, that they will in future be promptly delivered, without undergoing tedious examinations and torture. 2/ Permission for an American agent to reside in the country in order to keep up a good understanding and take charge of the sailors who are cast away. 3/ A coal depôt on one of the islands south of Jedo.

You must endeavour always to bring back the conversation to these points heedless of the remarks of the Mandarins to refer to other topics. These are essentials, of paramount importance; to secure them nothing should be left untried.

Keep always in mind that the mere verbal promises of these people are of no value; to settle every thing you must have a paper to which the seal of the High Officers is attached. The Emperor alone can decide on the questions brought forward, and only when he with the Gorache (the privy council) [Go-Rājū] signify their assent, the convention is binding.

The three islands of Japan are divided between tributary princes, most of whom are Sovereigns in their own Country. If they enter into an understanding, it would only refer to their territory, not to the whole Empire.

Nagasaki is an imperial port, whither the most intriguing Mandarins are sent, who will leave nothing untried to deceive you, and render the expedition void. Be therefore very cautious in all your words, avoiding as much as possible all discussions except those which bear directly on the subject. They will endeavour to find out something, which they may use as a pretext to reject the whole application. Knowing all this beforehand, you ought to be much on your guard.

Whenever public duty calls you do not eschew dangers. Never be disheartened, but always cherish courage, for how ill matters may look at the beginning, success will be awarded to the judicious and persevering.

During your voyage never neglect the reading of the scriptures, and likewise do so with Chin in Chinese. Read as much as you can of the works on Japan in Captn. Glynn's possession. Study the Chinese language as much as wind and weather will permit.

Recommending you to the gracious protection of your merciful and omnipresent Redeemer, to protect and assist you

I remain

Your affectionate Guardian

Hongkong
6th March 1849

APPENDIX II

Views on The Resident Minister Issue.

A. E/B.

Frederick Bruce to Lady Augusta Bruce (his sister) Shanghai
April 3, 1858.

The first approaches to Peking have been made in the shape of letters addressed to the Chinese Minister by the four Plenipotentiaries. The reply leaves no doubt as to the intention & wish of the Govt. to repel all advances towards more simple & direct communication with the Court. I fear that the capture of Canton has produced little effect on this bigotted & ignorant Govt., & will only be a further instance of how completely Sir J. Bowring has misunderstood its temper & policy. Fortunately the answers are so unequivocal in their tone, so palpably a violation of our treaty rights in refusing to allow us to communicate directly with the Ministers at Peking & so preposterous in requiring us to go back to Canton, & negotiate with the man sent to arrange the local affair there, & evidently so determined not to admit our right to the access we claimed to Canton under the treaty, as to leave us no option but a trip to the Pei-ho. Whether this demonstration will suffice, or coercive measure must be undertaken in that quarter - nothing but time can show. Of one thing I am certain, that if the Chinese Govt. yield anything it will be due to fear & to that only, & that whatever were the rights of the original quarrel, a change must be effected in our relations with this country, if progress is to be made hereafter by pacific means.

In truth it is even more the interest of China than of Europe that this change should be forced upon her. According to her maxims, a local authority who gets into a difficulty sufficiently serious to be reported to the Emperor is degraded at once, whether he is in the right or no. The consequence is, that their object is to interfere as little as possible, & they rely on the sense of

order prevalent among the Chinese, partly the result of their education & partly due to the universal prevalence of habits of industry among them, to act as a preservative from the evils attending their abdication of authority. The littoral provinces swarm with pirates & robbers, the Govt. makes no serious efforts to repress them, but leaves the people to supply their apathy by associations in self-defence. Now & then a great rebellion takes place, even for its suppression they look to time rather than to any decisive action.

This negation in spite of the disasters it inflicts on industry & trade may act when applied to the Chinese alone, who do not exceed certain limits in their opposition to constituted authority, who obey it implicitly, when it acts according to law and custom, & who, when driven to resistance by oppression, are satisfied with removing the cause and then stop. But now that they are confronted with the bold & adventurous people of the West, the governors are paralysed - they dread their power, and being ignorant when they can assert their just rights without involving themselves in a collision with foreign nations, they prefer as the wisest course never meddling with them at all. The foreigner becomes more audacious, and the scum of the earth are attracted to a country where they can commit excesses without restraint.. This state of things will increase, the people of China will be exasperated to vengeance, & it will fall indiscriminately on all who bear the name of foreigner, so justly made odious by the conduct of the black sheep among them. Nations will take up the cause of their innocent countrymen & hostilities will begin.

The greatest service to China & the best hope of effecting peaceably those changes which she must undergo to fit her for the new phase now opening in her national life, is undoubtedly, ministers at Peking, & a recognition by her of the existence of other nations with whom she is bound to act on the usual international principles. They could teach her how & when to assert herself, & how to make use, for her own benefit, of the arts & sciences of modern civilization. Steam on her rivers, reform in her armed forces would strengthen her Govt.. enormously against insurrection, would put down pirates, & by inspiring a wholesome respect of her power, would enable her to enforce her regulations. Unless she consents to enter on this path, she will be broken in pieces by her contact with Europe, as surely as glass is broken by iron.

But the Emperor remote from this contact, & unaware of the process that is going on will not see the necessity till too late - his own Ministers have not the courage to tell him, & the alarm of the consequences of intercourse with foreigners is too great for him to swallow the dose of his own accord.

I hope people in England understand the situation. In my opinion if we leave the difficulty unsolved. we insure a fresh war in a very few years, when the state of Europe may not allow the great Powers to be as unanimous & as moderate as they are at present.

B. From Lane-Poole, Parkes. I, p.259

1) To Mrs. Lockhart - Feb. 16, 1857.

It is well that we should be only heard, in the first instance at Canton; but in such a manner that the Emperor will be glad to hear us speaking to another tune elsewhere, - it should be in no other place but Peking.

2) To Mr. Lockhart between above date and end of March.

The issue of these troubles ought to be a resident Minister at Peking and liberty to go through the length and breadth of the land, and I trust it will be so.

C. While the following extracts are retrospective, Elgin's terms of expression and his attitude, clearly demonstrate the factors that determined his decision. The substance of the extract for June 29 may be found in Walrond, p.253. However, Walrond's entry for July 19 (p.258) is valueless; text copied from E/B. ms. Lord Elgin's letters journal to Lady Elgin.

June 29th....On Friday afternoon, however, Baron Gros came to me looking very much discomposed & said that the R & A Ms had come to him to implore him to induce me to recede from two of my demands -

1. A resident minister at Pekin; and, 2. Permission to our people to trade in the interior of China; because, as they said, the Chinese Plenipotentiaries had told them that they had received a decree from the Emperor, stating that they should infallibly lose their heads if they gave way on these points. Gros said if you have anything to say to Lord Elgin why do not you go? The resident minister at Pekin I consider far the most important matter gained by the Treaty; the power to trade in the interior hardly less so. I also suspected that the Russians who are constantly pulling the wires by no means desire that we shd obtain either of these objects - the American is such a fool that nobody can tell what he wants, but a slap at England is always a "bonne aubaine". Even Gros as I tell you had deceived me. I had at stake not only these important points in my treaty, for which I had fought so hard, but I know not what behind. For the Chinese are such fools, that it was impossible to tell, if we gave way on one point, whether they would not raise difficulties on every other....

July 19th....I had no instructions from this Government, except the intimation that they were desirous of finishing the affair, and that they left it to me to determine what the honour and the commercial interests of England required. I was therefore, of course, open to attack on both flanks, not by the enemy only, but also at the hands of my employers. For if I patched up a peace in order to comply with the desire that I should "finish the affair", I might be accused of not doing enough for the "honour and commercial interests of England;" on the other hand, if I went on fighting for the "honour and commercial interests." I was open to the charge of not "finishing the affair." 'Sur ces entrefaites', I struck out a plan which I firmly believed would enable me to accomplish both objects....This plan consisted in a rapid move upon the capital by the route of Tientsin; a diplomatic move, in the first instance, but so supported that it could, if necessary, repel hostility. I was perfectly satisfied that this plan, if carried boldly and rapidly into execution, would not be attended with any serious difficulty. I had therefore, as I believed, difficult as was the feat which I was called to accomplish, the game in my hands. Imagine my position when I found that the whole of my plan, with the important issues involved, was absolutely at the mercy of the naval authorities who had resolved to thwart it....Observe what was at stake; on the one hand, as I believed, and as the result has proved, a complete

success; but on the other, if we had left the Gulf of Pecheli, as the Admirals intended, without having brought the Imperial Government to terms, I am not sure that an attack upon the Europeans at all the ports might not have been the consequence. All the blame of this would have been cast on me, and I should have borne the reproach of having by my rashness and folly, compromised the whole relations of Europe with China...

D. I.C.Y.Hsü, in his China's Entrance into the Family of Nations, (Cambridge, Mass. 1960) p.48 and p.229, n.14, basing his information entirely on Wright, Hart citations, repeats the assertion that Lay was responsible for Lord Elgin's insistence on including the resident minister clause in the treaty of Tientsin. In the first place, Hsü cites the wrong page in Wright (i.e. "139" instead of "127"). In the second place, Wright cites two sources (n.14, p.153): a) "F.O. 17/289. Elgin to Malmesbury, 5th July, 1858". The despatch number is not given. Several despatches, numbers between 139-144, were dated July 5. None of them gives any indication that Lay, any more than any other member of the Mission, was responsible for Elgin's determination. b) Wright quotes Lay's Opium p.12 (most of which is reproduced by Hsü) which was written about 35 years after the negotiations. This affirmation by Lay of his influence is the only evidence which credits Lay, alone, with any special influence.

Other contemporary sources (e.g. "[Scarth]"), berate Elgin for having demanded too little instead of too much because of the insidious influence of Lay and Wade!

APPENDIX III

E/B Extract from 'ms' of Lord Elgin's letters-journal: June 12, 1858.

June 12th. - Last night things looked promising. The Russians and Americans had made an attempt to check me, by affecting to believe that my interpreter, Mr. Lay, had spoken too roughly to the Chinese Plenipotentiaries. I do not think it is possible to imagine anything more contemptible than the conduct of these gentlemen - especially the Americans. Of course my great object is to get the Chinese to make the requisite concessions here, so as to prevent its being necessary to resort to further acts of violence; these sneaking scoundrels do what they can to thwart me and thus while affecting to support the Chinese act as their worst enemies. However, I made my language stronger instead of weaker in consequence of their remonstrance, and the result was, that at a late hour last night I received from the Chinese Plenipotentiary a most promising communication. God grant that it may enable us to finish this wretched affair! I am reading over your last letter. [There follows in the manuscript several passages of endearment.] Your visit to Dunnikier takes me a generation back, when another two sets of cousins, divided much the same as to sexes, used to spend many pleasant days together there. [A few additional passages of personal reminiscences follow.] Alas how old we are getting - I ought to be a great deal older since we parted for I have gone through a good deal in several ways. Certainly I have seen more to disgust me with my fellow creatures than I saw during the whole course of my previous life. I did not know what brutes - lying - sanguinary - cheating - oppressive to the weak crouching before the strong - I did not know I say what they are those smooth faced countrymen of ours who look at home as if butter would melt in their mouths, and as if nothing could tempt them to step an inch on either side of the strict line of propriety, till I found them in the East among populations too timid to resist & too ignorant to complain. I have an instinct in me which loves righteousness and hates iniquity and all this keeps me in a perpetual boil. I must tell you that I do not think "Our Own's" letters in the Times give a really correct view of this country. I saw very well, from

his case, what the great evils are of this way of informing the public mind. It was always necessary for him to write a telling letter. Everything was exaggerated for effect. The fighting was a work of the fancy, and the poor Chinese were of use only as 'material' for caricatures and epigrams. I do not think he was at all a bad specimen of his class - Except that he belonged to that most begotting of all classes the radical 'John Bull'. He never entered into or ever approached the heart of Chinese life. He looked at them entirely from without, with the eyes of a man whose whole stock of ideas has been laid in at Temple Bar, and who had not room for any importation from any other quarter. As he said of the Chinese in one of his letters, "they are not a cute, but a cutaneous people;" That was pretty much the sum of his observations. All this is between ourselves and to prevent you from being too much influenced by his prejudice ag^t a people who have many good points & whose political & social condition is by no means so bad as he makes them out to be. [Here follow six sentences of strictly personal expressions about his wife and family]. It is rather strange that Malmesbury saw not only my despatches, but also Fredk's letters, that he sh have written impertinently to me, but I suppose that is part of the system. I am most obliged to Mrs. Campbell & think her a person of very good taste. I have not been in the way of compliments of any sort lately - so they are all the more prized when they come. Mr. Algernon Wort [?] is a gentleman who wanted to come with me. [This concludes the entry for this date].

APPENDIX IV

Notes on the origins of a "Foreign Board".

Extension of remarks on Ch.8, p.14, designated by n.46.

This phrase is used in order to cover the requests and authorisation to set up what has been known as the "Foreign Board" or, according to the abbreviated Chinese version, as the "Tsungli Yamen". This writer has concluded that the contention that Lay played any significant part in the origin of this board is predicated on extremely shallow evidence. The main proponent of the view here refuted was S. F. Wright, Hart pp.145-49, who based his assertion solely on a brief passage in a précis prepared by Lay of a confidential conversation he had with Hsüeh Huan in April, 1860 (Vide Ch.VIII n. 164), during which Lay recommended that a "foreign office" be established. ((This conclusion has been accepted by W. Levi, Modern China's Foreign Policy (Minneapolis, 1953) p.16 ff, without too much discrimination)). There were so many other factors that came into play before the Tsungli Yamen was inaugurated nine months later that Lay's contribution (even assuming his was an original suggestion, which there is good reason to doubt) should be considered relatively inconsequential. ((This view is well illustrated by the more comprehensive studies of SM. Meng, The Tsungli Yamen: Its Organization and Functions (Cambridge, Mass. 1962) and M. Banno, op.cit.)). T.F. Tsiang, "Origins of the Tsungli Yamen", CSPSR XV 1 (apr. 1931) pp.92-97, has argued that Article V did not establish a "foreign office" as a 'sine qua non' of formal diplomatic relations and that a branch office might have been set up under the Li Pu. One may also speculate that even had this been done, the Ch'ing officials almost certainly would have been required to try to pass it off as a "foreign office".

Because of the foregoing reasons and also because, in the context of Ch.VII Lay was not associated with any of the early developments of the Tsungli Yamen, a notice of this sort is all the writer deems necessary to account for his ignoring the subject in the body of the study.

APPENDIX V

E/B. Lay and Wade to Lord Elgin: 1861

A. H.N. Lay to Lord Elgin. Private. Shanghai, 22 March 1861.

My Lord,

At Mr. Parkes' request I send your Lordship a Printed copy of the "Provisional Regulations for the trade in the Yangtze .["]. All accounts concur in pronouncing the prospects of business at Hankow to be "very good".

Prince Kung has sent me a Commission as Inspector-General. But the rebellion has gained such strength of late as to threaten now the immediate downfall of the Dynasty. This fact and the state of my health considered have determined me to go home on leave of absence for this year. And I propose starting by the next mail. Mr. Wade writes that Peking is in an "awful state", and that "if Tsang kwoh fan or any other Chinese agent be really able to reconquer the provinces, which are so disordered that they are no more of the empire than the flag which hangs down from a rent in the coat, then of course the Tatsing will revive again. Otherwise, the question is only when will its remaining solidity melt away". In another letter he says: "This morning brings news of Sangkolinsin's being shut up in Tsi-ning chow. Whether this be true or not, we know that he has sustained some very serious defeats. He can have no artillery, and in Peking they have no money. If the Nien Fei destroy Sangkolinsin, Peking is inevitably lost". This position of affairs deters me altogether from incurring fresh responsibilities. Before extending the System, I think it prudent to wait and see what this year will bring forth. From the present aspect of things, it seems certain that the Dynasty must either revive or ~~fall~~ this year. If next year the Tatsing be in the ascendant, I shall have a clear field for my operations, while if the rebels are triumphant, I shall have nothing to regret. In the meantime, I shall have an opportunity of explaining at home what the Foreign establishment is. I am told that great efforts are to be made shortly, at the instigation of Perceval and others, to effect a change of System.

My address in London will be no.6 Burton Crescent, W.C.

Believe me, My Lord,
Yours very faithfully,
[Signed]HN. Lay

B.

T.F. Wade to Lord Elgin. Private. (Extract) Peking, 23 July 1861.

...The presence of foreign ministers at Peking stands the city in some stead no doubt; so that of the Allied Force at Tientsing, or, where I suppose it will soon be at Ta-ku, does the whole vicinity. The rebels will keep a respectful distance so long as there is a chance of a foreign complication; at least the rebels of the North. If, as it was predicted, there is a solid move in the South of all gangs confederated, I doubt that they will again venture on Shanghai. The [sic] keep clear of Ningpo simply on our account. No doubt all this is in contravention of the letter of non-interference, but I see no alternative except to be burned out by a banditti who are a spreading fire leaving nothing but ruin behind them, and in some places not even ruin....a change on the Throne may give the dynasty which is still respected, a new lease and between Ministers and Customs it will be hard if it be not inoculated with new ideas that will avail it within and without. I say this is its last hope. It is, God knows, but too probable that it will continue dreaming and unreformed,...indeed a not very grave crisis might destroy it suddenly such....as would be caused were the Manchu Garrison of Peking to revolt for want of pay....These are our fears and few hopes on the dynastic side; on the other there is as yet worse than nothing....Between the pressure of two such forces it would be a bolder man than I who would predict the result of China.

P.S. Mr. Bruce has read my letter to your Lordship and begs me to say that....he has nothing material to add.....

APPENDIX VI

Exchanges of Correspondence: Hart, Wade and Lay - 1862

A. Lay, L.R.

March 26. [1862]

"Star & Garter"

Richmond.

To Hart,

Attorney General's opinion on the whole satisfactory, though carelessly worded by Hannen in one or two places.

Parkes's suggestion for a conversation respecting Courts for settlement of Customs' cases. If Kung cedes any more Sovereign rights, I resign.

Interviews with Lord Palmerston, Layard, & Gregson.

I shall not leave before March. Parkes loud in denouncing imbecility of Chinese Govt. Considering the absence of Christianity in China we are not entitled to look for the truth & principle we find in our own more forward country.

I should have been inclined to take a higher tone with Kwan, & I would not have received the \$200 because a present of the kind implied your infinite inferiority in position to himself, & would deprive you of your proper weight with him & other officials. Now, the Inspector-General has of course no no [sic] formal rank (at present); & it is not necessary or expedient to claim any. But as the p'oong yew and confidential adviser of the Prince, he is by courtesy entitled to equal respect & consideration with the Highest officers in the Empire. The Inspector-General has a right to, & must have, the same position which the confidential 'tzeyay' of the Prince or Governor General has assigned him. It would be absurd to attempt to get formal rank, - which would excite the jealousy of the officials, & make Kung's work perhaps more difficult, - but we must see to it that we have the real power. I should receive no orders from Hsieh or any other official, but from Prince Kung direct alone. Complaints against consuls should go from the Prince upon his own inclination, when he gets it from you.

These would probably be of a general nature when furnished by you. Where they touch upon a particular case, the report of the Governor of the province would be of service. The desp. upon it to the Foreign Minister should be submitted to you, for you to add any details or remarks that might have been omitted, or that it would be advisable to add. The Inspector-General must have direct access to Prince Kung, & the Tsung le yamun. All desp. to Foreign Ministers upon Customs matters should pass through his hands for his suggestions and corrections. Copies of all instructions to the Provincial Author. upon Customs should be furnished him. These are indispensable rules, I conceive. I should say to Prince Kung, I have only to do with 'you' & nothing whatever with Hsieh or any other provincial authority. I am not a Chinese, & therefore have no formal p'in, but the duties of my position considered, if I were, my [rank] would be only one degree below yours. And you must take this line, which it is only necessary for me thus to indicate briefly. We must insist upon this principle, or we shall lose weight with the officials, & presently with Kung himself. You must remain at Peking as long as you can this year.

p'oong yew 朋友 ; tzeyay 帥爺 ; p'in 品 .

B, Lay, L.R. [Not copied in Lay's handwriting.]

Star & Garter Hotel
Richmond. B.W.

April 26/52 [sic]

My dear Hart,

Your most welcome note of the 27th Febry announcing Laou's receipt of instructions to pay over a portion of the 600.000 taels. authorized by Prince Kung for immediate payment towards the purchase of Steamers, reached me on the 15th Instant. I wrote off at once to Osborn, telling him I thought he might apply at once with perfect safety to be suspended. I do not apprehend any difficulty about his getting leave, and I am sure that so far as he can command his own movements, he won't lose an hour. But I fancy he will be obliged to remain on board the "Donegal", until actually

relieved by his successor. That there may be no delay however, I have asked him to send me instructions with respect to the building of two eighty h.p. gun boats, which I can order forthwith. I have also suggested that he may consider it adviseable to have them iron-clad, to a certain extent. You make a serious mis-calculation in your note: "The sum of 600,000 taels i.e. about £250.000 Stg." Were the money remitted entirely from Shanghae, at its highest rate of exchange. 6/8, we should not realize more than £200.000. We can scarcely count upon an average of more than 6/; in Canton or H-Kong, you won't get 5/-.

In your letter of the 20th Janry, you said that Woo Taoutae could produce ~~could-produce~~ in four months 200.000 tls., & Hsieh had promised to get in other ways 600.000 tls. in addition. If you can get this 800.000 tls. in addition to the Canton 200.000, do so by all means. We shall need all 'you can send', duplicate machinery, coals, powder, shot, paint, stores of all sorts, cost of passage out, and last but not least, the guarantee fund, considered. The salaries of the officers & men composing the force must be guaranteed by a deposit in the Fund or, in some Bank. This I consider absolutely necessary. The vessels might be fully supplied for three years, so that we may avoid as far as possible making any fresh call upon Kung during that time.

You must send me by return of mail a despatch from P. Kung, undertaking to agree to, and confirm such terms and conditions as I may arrange with Osborn, and those under him. Take care please that its wording be full and exact.

Upon my word, what we are going to do, is a very serious & responsible undertaking! We must have the consent of our Govt., and, if possible, this consent must be notified to the Civil & Naval Authorities in China. I shall also go through the form of applying to the French Govt. for permission to employ some of its ~~ferees~~ officers. The compliment will please and conciliate them. As things are, we 'must' work with the 'French'. Our policy can't be a different one from that of ~~the-new~~ our own Govt. - I must have a look at the Foreign Enlistment act and see what it says - Sir F. Kelly was just starting for Switzerland, when the Customs' questions were laid ~~upon~~ before him, so I said I would wait till his return. He was prepared to name a day for an interview, but as I did not want the points disposed of helter skelter, I preferred waiting until he could give them his deliberate attention.

You must take care and see that Kung agrees to no proposition for a mixed court. From a remark Parkes made in one of his recent notes to me, he has evidently been talking to some of the merchants on behalf of the F.O. on the subject. The result will doubtless be that he will draw up some proposals which will be out to Mr. Bruce, with the request that he will lay them before Prince Kung. 'Be on the qui-vive' Supported, as I have said before, by the Attorney General's opinion, there is not the smallest reason for Kung's doing otherwise than simply declining to entertain them, as involving a further surrender of sovereign rights, not ceded by Treaty. I know what fools the Chinese, from unpleasant experience, are on these points, and so I am a little nervous - perhaps ~~doubt~~ needlessly so - that they should accede to 'any' proposal of the sort wh. would I believe bring our Establishment down by the run. Parliament has been adjourned for a fortnight during the Easter holidays, so Lord Palmerston is out of town. When he returns, I think I shall seek another interview.

It seems to me probable, and more so every month, that on my return to China, my presence will be required for some time at any rate, & perhaps permanently, at Peking. I believe that to carry out our Customs, and the other business which we shall have on hand safely not to say satisfactorily, you or I must live at Peking. Questions will be always arising which the Chinese alone are utterly unfit to answer, and as long as they are left alone we shall have no end of trouble from consuls & possibly from unfriendly Ministers. The Inspector-General must therefore have a house to go to, & I want you to ask Prince Kung to allot me for the purpose, or authorize you to hire or build one. I should require a house commensurate with my dignity & rank (!) and one that I could put my wife & child in. I suppose there are large & comfortable 'Kung-Kwan' to be had.

Impress upon Kung that he may be sure that what he sends will be rightly used, and that it will be false economy if he stints us. A Hundred thousand taels more or less he mustn't object to.

Yours very truly,
H.N. Lay.

P.S. Ask Laou whether he would not like to have two gunboats for the Canton river. Send the money as fast as you can; any delay

won't be on this side of the water Kung may depend. Did you read Mr. Gladstone's speech - his Budget I mean. He says. "The expectation entertained in China as to the field of the Customs duties has been somewhat too sanguine, and I consider, instead of 4 or 5 years, a period of 7 or 8 years from the first payment will be necessary to realize the whole indemnity, unless some arrangement be made in the meantime for anticipating the payments and shortening the time." Don't you let Kung agree to any thing of the sort. The payment of the indemnity serves the Govt. as a good argument for supporting our Institution, which can't be gainsaid.

Kung-kwan 公館 .

C.1: E/B. Bruce collections

"Copy"

No.3
Separate

Hongkong.
14th March, 1862.

Sir,

At the many interviews which I had, during the summer and autumn of last year, with the Prince of Kung and the other members of the board recently established for the superintendence of foreign relations, I repeatedly took occasion to draw attention to the growing necessity for the introduction of measures calculated to repress piracy along the coast, and to secure from the inroads of lawless banditti the ports and places opened by treaty to foreign commerce. His Imperial Highness evinced great interest in the schemes proposed, and directed me to draw up in writing a memorandum containing my suggestions both as to what ought to be done, and as to the manner in which such propositions might most easily be carried into effect; the memorandum then drawn up was

subsequently laid before the late Emperor Hsienfung, who issued a Decree ordering the Governors General of Hoo-Kwang and the Two Keang to report upon the practicability of the scheme.

The memorial in reply, which, however, I have not yet seen, is said to have approved of the suggestions made by me.

Amongst the measures proposed for adoption was the construction of a Steam fleet for the police service of the Chinese waters, to act in cooperation with the maritime [sic] customs under foreign inspection; and it seemed to His Imperial Highness, that that project ought to be the first to be carried into execution, as likely to be attended with, immediate, beneficial results, and as being a measure of a kind that would protect commerce and, in that way, tend to prevent any interruption of the friendly relations which it is the determination of the Prince shall be maintained with foreigners, so long as his voice is powerful in the counsels of the state. If the motive which actuates the Prince, in his attitude towards foreigners, be, to say the least of it, nothing more than that he sees the necessity of accepting the situation and of making the best of the position to which circumstances have led, it ought to be a cause of much satisfaction that His Highness should have taken even that step in advance, throwing aside both the exclusive policy and the opposition to innovation, which have of late been so detrimental to the best interests of China.

The intestine disorders of the past fifteen years, aggravated by foreign wars during the last five, had, however, interfered so sadly with the finances of the country, as to make it somewhat difficult for the Prince to say at what time it would be possible to provide sufficient funds for the initiation of the changes proposed. Moreover, upon the death of the Emperor Hsien-fung, the self-styled Regents were so powerful, while the court remained at Jehol, that it would have been inexpedient for His Imperial Highness, already accused of being too favourable to foreign interests, to further endanger his position by advocating the adoption of my propositions, and by demanding authority for the outlay, for such a purpose, of public money, while there remained in power a court party notorious for its retrograde policy and antipathy to foreigners.

The return of the young Emperor to Peking, an event which the Prince was most anxious to bring about, together with the subsequent occurrences, not only reinstated His Imperial Highness in his proper

position at court, but made him virtually the ruler of China. One of the Prince's first acts has been to approve of the adoption of my proposition for the construction of a steam fleet for coast-guard and police duty in the Chinese waters, and to give directions for the appropriation of funds.

On the 3rd day of the 1st month of this, the first year of the young Emperor Tung-che, despatches were addressed to the authorities of Kang-soo, Fuh-Keen, and Kwang-tung, informing them of the measures I had proposed, and directing them to place at my disposal, within four months, the sum of 'six hundred thousand taels'; and His Highness has likewise issued instructions, addressed to myself, directing me to obtain and apply the above sum, with all expedition, for the purposes I had suggested.*[sic]

The despatch addressed to Laou, the Governor General of the Two Kwang, authorised His Excellency to hand over to me at once the sum of Two Hundred Thousand Taels. Unfortunately, the finances of the southern provinces are not, at the present moment, in a condition to meet the demand in full; but, notwithstanding, His Excellency, who is personally much in favor of the scheme, has already supplied me with half that sum, namely 'One hundred thousand Taels', or dollars one hundred and thirty nine thousand four hundred and seventy, and has assured me that he will pay over regularly every month at least Twelve thousand five hundred Taels, until the sum authorised shall have been delivered in full.

I now enclose Firsts of Exchange at six months sight for Pounds Sterling 'Thirty One thousand Three hundred and forty three, eleven shillings, and five pence' the receipt of which you will please to acknowledge by return of post. [N.B. Note in margin details bills of exchange.] Before the expiration of the present year, I trust to have sent you by successive payments, not merely the remaining Five hundred Thousand Taels of this the first, grant, but, in addition, a further sum of Two hundred Thousand Taels.

His Imperial Highness is most anxious for the arrival of the steam fleet, the construction of which he has now authorised; and for various reason which you can well understand, it is of the greatest importance that no time be lost in despatching the vessels procured. For my part, nothing will be left undone to obtain and forward funds with all expedition, and you, I am sure, will spare no pains to send the steamers well fitted out and with the least possible delay.

In a private letter connected with this subject written last year, I mentioned to you the name of Captain Sherard Osborn C.B., and expressed a hope that he might be induced to superintend the construction, and subsequently take command of the fleet; a letter of yours, since received, has, to my great satisfaction, informed me of his willingness to do so.

Being fully assured that, in this matter, the end in view with you, as with myself, will be the benefit of this country, I now conclude this despatch, enclosing a memorandum with reference to the vessels to be procured, the people to be engaged, and the rates of pay, on all of which points I beg that you will without delay report to me for the information of the Chinese High Authorities.

I am,
Sir,
Your obedient Servant,
(Signed) ROBERT HART
Offg. Inspector-General
of Chinese Maritime Customs
[sic]

H.N. Lay, Esquire
London

C.2.

Memorandum

"Enclosure in No.3 Separate"

Steam Fleet for the police of
The Chinese Waters:- Vessels
to be procured, People to be
employed, and salaries.

1. The money now sent, One hundred thousand Taels [£31,343 - 11 - 5 Stg.] should at once be applied to the purchase or construction of Two Gunboats, similar to those of eighty-horse power in the English Navy. These, as soon as ready, should be sent, without delay, to cruise in the Canton waters, where piracy has of late been greatly on the increase.

2. The money yet to be sent, Five hundred thousand Taels, together with an additional sum of Fifty thousand Taels, should be appropriated for the construction of Two additional Gunboats and three despatch boats.

3. The remaining One hundred and fifty thousand Taels, for which authority has yet to be procured, should be expended in the purchase of two additional Gunboats.

4. The rates at which the above items of expenditure are calculated are:

£30 per Ton, and £90 per horse power.

6 Gunboats:	250 Tons: 80 horse power: each £14,700 i.e. Tls 44,100: with spare machinery &c. Tls 5900. Each gunboat Tls 50,000: total, six Gunboats, Tls 300,000.
3 Despatch Boats:	750 Tons: 250 horse power: each £45,000 i.e. Tls 135,000: with spare machinery &c. Tls 15,000. Each Despatch boat Tls 150,000. Total Three Despatch Boats Tls 450,000.

Six gunboats	Tls 300,000
Three despatch boats	Tls 450,000
<u>Total</u>	Tls 750,000

The sum now authorised by the Prince is Tls 600,000; in June an authorization for an additional sum of Tls 200,000, or perhaps more, will be procured

[I am of opinion that the fleet should at first consist of 4 despatch boats and 6 gunboats; one despatch and two gunboats to be stationed at Canton; do at Foochow, and do at Shanghai; the 4th despatch boat to be Captain Osborn's flag ship.]

5. With regard to the number of people to be employed; and the rates of pay they should receive, I cannot venture to give any other than very general suggestions.

To the enquiries of the Chinese authorities as to the amount to be appropriated annually for the payment of the foreigners employed in the fleet, I have replied that

a. for each Gunboat there should be

European	{ a Commander	@	about £600 a year	
	{ 2 Officers	@	£400 and £300	"
	{ 2 Engineers	@	£400 and £300	"
	{ 2 Gunners	@	£150 each	"
	{ 10 Seamen			
	Marines	@	£60	" "
Chinese	{ 30 Seamen	@	£25 each	"

Total Pay for crew of each gunboat £3,650, i.e. Tls 10,950.
Six Gunboats Tls 65,700.

and

b. for each despatch boat,

European	{ a Commander	@	about £800 a year	
	{ 2 Officers	@	£500 and £300	"
	{ 3 Engineers	@	£400, £300 & £300 a year	
	{ 4 Gunners	@	£150 each	"
	{ 30 Seamen	@	£60 each	"

[amongst whom should be six marines]

Chinese	(100 Seamen	@	£25 each	"
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Total Pay for crew of each despatch boat, annually,
£7,500, i.e. Tls 22,500. Four despatch boats Tls 90,000.

Grand Total, 6 Gunboats, and 4 Despatch boats about Tls 155,700 yearly.

N.B. What is to be the pay of the Commander in Chief? £2000 a year?
I am of the opinion that the above rates of pay will not fail to secure first class men.

6. Coal must be sent out from home: say three cargoes, to Canton, Foochow, and Shanghai.

7. On my return to Peking, I shall endeavour to produce commissions for the Officers, and Government papers for each vessel. The Prince, too, will probably fix upon the ensign to be worn by the Chinese Government fleet.

8. The last word to be written for the purposes of this memorandum is - haste!

(Signed) ROBERT HART
O I G
of C.M.C.

D.1. Lay, L.R. [Extracts, Portions not given in Lay, "Interests"]

"Star & Garter Hotel",

Richmond, May 9. 1862

My Dear Hart,

I have your No. 5 dated Hong Kong March 14, and the "official despatch" from yourself which accompanied it, enclosing several bills of exchange for £ 31.343. 11/5 at six months sight, remitted by the Chinese Govt. On receipt of these Bills, I lost no time in signing the enclosed receipt, so as to prevent the amount being included in my personal property by my executors, in the event of my death.

I have not executed a document by which this sum of money would in the event of my death "revert to me to be held for the use of the Prince of Kung", as you have requested me in your note to do, because to give such request due validity, it needs the formal authority of the Chinese Government, without which I have no right whatever to vest the property of the money in you, or in me, or in any one.

The same remark applies to your further request that "the ownership of the Steamers is to be vested in ^{should} ~~me~~ ^{you} for the use of the prince of Kung, until handed over by you", on arrival in China to the Agents of His Highness." The ownership of the Steamers can be vested only in the Chinese Govt. Without its distinct authority, I should incur a perilous responsibility, were I to vest their ownership in any one. Where so large a sum of money is concerned, it behoves me to act with the utmost caution. All that I can do, is to secure the Government against loss in the event of my death. In regard to yourself, you are protected by the terms of my receipt "through Robert Hart Esq^{re}." And here I must correct a mistake you appear to have fallen into. The money, I take it, was not handed over to you, Hart, but to you as the Offg. Inspector-General. In an official matter, there can be ~~only~~ no individual action. Once admit individual action, and we shall have our French and American Colleagues scheming and acting independently. The money is handed over to you to be remitted to me the Inspector-General, not to Lay, for disbursement.

In writing your "official [sic] despatch", you no doubt simply meant to say put something on record to "constater", as Wade would say, the undertaking. But you quite forgot the danger you were running of embarrassing my action. Though your memo, it is true, was written of your own motion and without authority, yet if eventually adopted by the Chinese Government, it ought in strictness to be adhered to. The exact cost of the vessels, &c., cannot be precisely determined until Osborn (or some other competent man) has prepared careful estimates after consultation with various authorities. The calculation I sent you will I make no doubt prove now considerably under the mark, by reason of the results attained by the recent experiments upon iron and wood at Shochuryness. Each vessel may cost much more than £30 per ton. I know not. Kung might complain of this, and say, what Mr. Hart wrote was with my sanction, and he might bring an action against me for unauthorized use of the money! And I should have no authority to show that I was entitled to depart from the only sort of authority in my possession. Where so great vast a sum of money is concerned, one cannot, I repeat, be too careful.

In a matter which is of necessity one of entire trust, the Prince need not hesitate about putting the fact that it is so on paper. Tell him from me that at present I dare not use the money, because I have not his authority for doing so, and that as it is quite impossible, he will allow for him to send me specific instructions it is necessary that he should send me "full powers". The one thing or the other they must be. Specific instructions, supposing me willing to act upon them, would serve but one purpose, namely to fetter and embarrass the ship-builders and others and consequently ensure a half equipped and in every respect inefficient fleet.

....There could not be two sets of Foreign Advisers, and a rival board for the management of affairs connected with Foreigners would infallibly involve both itself and the Customs in speedy ruin. The house would be divided against itself, which as a wise man said, cannot stand.

There is another condition that I should include in the "terms and conditions" of our com¹ in Chief. It is this. The Ch. Govt. must be bound to have no Foreigners in a military capacity, save and except those under his authority, - my object being to snuff out Taoutae's fleets and "Col. Ward's divisions". We must secure ourselves against a rival military force on shore. But first and foremost there is the legal ground to be cleared.

The strengthening the Chinese with a really formidable fleet will be viewed with no little distrust, I assure you. Since the murder of DeNorman & Bowlby, people in England seem to have lost all faith in the Chinese. The Foreign Office will, I expect, be primed with many objections to the scheme to remove which I rely as I have said on the personal character of myself and the others.

Mr. White and others will not fail to call the attention of the House ~~to-a-scheme~~ of Commons to the scheme. How careful then should we be to make our footing sure, so that we may be

in a position to flip our fingers ~~te~~ at Consuls, Merchants, and HongKong juries.

Our endeavour must be to get the help of the Govt. as well as ~~its~~ approval. We should get instructions sent to the Admirals on the China Station and to Bruce and the Consuls. An Admiral jealous of Osborn or _____'s gaining glory, might and would in the absence of instructions, most effectually bother him, while if a Minister unfriendly to Customs were to take the place of Bruce, we might meet with serious opposition ~~to our plans~~ at his hands....

You had better send the remittances at sight. As time will be an object, I shall have to discount the Bills. It is better that you should get less for your tael out there, than that we should have to pay discount here. It comes to the same thing, but the bills represent a larger amount in Sterling than we actually get the benefit of, and the charge for discount in the Accounts, Kung will look upon as a "squeeze". You must not adopt the notion that Kung's consent to buy steamers is altogether owing to your efforts. The subject has been brought before the High Authorities repeatedly, and memorials have been sent up on my suggestion. It was thus that I obtained authority to purchase the "Confucius". During the negotiations at Tientsing, I urged the subject in person, and it was at my dictation that the article in the Treaty about joint action for the repression of piracy was inserted, and it was worded as it is in order to give me a handle for inducing the Govt. to buy Chu'eh. [sic] I tell you this, however, not to detract from your merit in getting Kung's consent. I should be slow "to drill men". That will come in good time. You must take care not to do too much, before our footing is sure.

With regard to additional clerks for the Customs, if Kung will send me the requisite authority & a remittance to pay their passage, say £200 each, I shall be happy to select half a dozen men - 20 to 23 years of age. I should like to send Kung a few things from the Exhibition, such as models of steamers, Engines, &c.

I have had the words "Substitutes or Agents" put in, so that should I return to China before the vessels are completed, I may have the power of authorizing some one to do whatever may remain to be done.

I send you the "Times" of the 3rd.. Mr. White promises you will see to bring the Taeping movement before the House shortly.... Our preliminaries once arranged, we can make up for lost time. I have put in "pensions" in the authority. Men won't go out to be potted at and wounded, unless they are in that event to receive compensation. Not only have we to buy ships, but we have to "organize a service".

I will enclose in my next a duplicate, which you can keep, of the receipt now enclosed for the £ 31.343. 11/5.

What about the "tribunals" In Customs case? Has anything gone out from the F.O.?

Yours &c.

ch'uan

AS

.

D.2 [N.B.]

HART) Enclosure in my letter to Hart, dated 9th May/62.

To be embodied in a despatch from the Chinese Government addressed to Mr. Lay.

Referring to the £31,343.11.5. British money, already paid to you, and to all monies which may from time to time be paid to you (except on account of the Maritime Customs) the same are to be applied by you as follows:- In purchasing Steam Vessels, and fitting them out with all necessary machinery, armament, boats, coals, stores, and other appendages &c. &c:- In the engaging of Officers and Men for the service of such vessels, and making contracts and arrangements with them, upon such terms and conditions, in all respects, as you shall think fit:- In the providing of a guarantee or reserve fund, for the salaries, wages, pensions, and other compensations, of or to such Officers and Men:- And in payment of all expenses of, and incidental to, the effecting of the above subjects, and generally for such purposes as you shall, in your absolute and uncontrolled discretion, think necessary or advisable, for the benefit of the Imperial Government of China.

And I hereby undertake, on behalf of the Imperial Government of China, to confirm all that you, or any substitutes or Agents acting under your authority, shall do, in the application of such monies, or in effecting the objects, hereinbefore referred to.

[N.B. Follows immediately after conclusion of postscript to letter of May 23. Copy also found in E/B. Bruce's papers.]

E. Lay, L.R.

To Hart

"Star & Garter"

(Extract) [sic]

May 23. 1862

I enclose copies of my receipt for the £31,343.11.5 sent in my last letter as having probably handed the original to Prince Kung you may like to have something in your own possession.

Sir F. Kelly having returned and declared himself ready for a consultation, we lost no time in fixing a day. I found when we met that he had scarcely looked into the case - that he had not even read the Order in Council. However, he made up for this by his painstaking during the consultation which lasted over two hours, to inform himself of the actual state of things in China to which our questions had reference - went very fully into his reasons for the opinion he pronounced in our favour, and gave us some valuable hints as to procedure. He even suggested changes in certain of our questions, such as would elicit exactly the answer we desired to obtain. - Any defect arising existing in the Treaty by reason of which we as Customs Officers might at any time incur a hazardous responsibility, or our action be hampered, can be got over, it seems, if we can plead the sanction of the Law of China. If the Treaty does not explicitly authorize a particular act, it is of no consequence, if the Law does. China like any other country is entitled to make her own laws, without reference to other Powers, provided these be not in violation of the International Law of Nations. For example, the word "dues" in the _____ art. of the Treaty is now held to mean "fines". That art. says that on the payment of the dues and duties the Supt. shall give up the vessel's clearance, and it is doubtful whether under the Treaty a ship's clearance can be detained for non payment of a fine. But if there was a law of China declaring that no vessel should be permitted to leave a port until she had paid any fines she might have incurred, we should be perfectly justified & quite safe in detaining her.

The Supreme Court (or Consular Court) can take cognizance of our acts, because no British subject can acquit himself of his nationality, but it will be sufficient for us to plead our office, & that our action has the authority of the Law.

It seems to me, therefore, that our next step must be to draw up a short code of Customs laws, and get them embodied in the 151, In a copy of the 151 which I have in Shanghai there is one law, I remember, making foreign vessels trading at non treaty ports confiscable. I wish you would turn it up and let me have the Chinese of it, & at the same time ascertain from Kung or Wanseang whether there are any le [151] besides this one with reference to foreign vessels or trade, and if so please send me them as soon as possible. I shall consult Stephen as to the terms in which the code should be drawn up so as to secure us complete immunity. We cannot make our ground too safe.

I told Sir F. Kelly of Meadows having fined our tidewaiter 200 dollars [at the top of the page of which the following is the continuation of this letter appears "Extracts not in extenso."] for seizing some gunpowder on board a Ningpo Boat. He said Meadows was flagrantly wrong!

I have asked Stephen his opinion as to whether it would be safe for me to use any portion of the money without express authority from Prince Kung. His reply was, certainly not.

Don't forget my house.

I am glad I may be quite certain of Tls. 650.000 before November, & that you are moreover strong enough to get authority for half as much more. "That sum (you say) will do for 3 despatch boats and four gunboats." I am glad to see that you have reduced the number in your own mind from ten vessels to seven, to which latter number you say you are pledged. I don't expect that 3 despatch boats & 4 gunboats can be turned out - "All expenses included - under £250.000. [sic] There is the guarantee fund, coal, stores, a supply of shot, shell, &c, & insurance which I forgot to name in my last, for I apprehend it would be our duty to insure the vessels for the passage out. Tls. 650.000 & half as much more, viz. Tls. 325.000 would make 975.000, which at 5/ exchange would realize £243,750 or at 6/ £292.500, short of our wants, as I reckon them, by £100.000.

As soon as Osborn comes home, we will make as accurate a calculation as possible. Without him no calculation that I make can be relied on.

May 26th

To the above I added a postscript announcing Osborn's arrival.

Ackd. his letter that morning recd. from Foochow of the 6th April.

"With regard to my brother Walter", I said in substance as follows: "To say the truth, being no doubt impressed with the uncertainty of things in China, I quite forgot to answer your query about him. I asked Mr. Bruce to give him an appt. Mr. Bruce

said he would on the condition that he should not be afterwards withdrawn for the Customs' service. In this condition I agreed, and explained it to my Brother. I do not think therefore he would be entitled to ignore that condition. Unless Mr. Bruce would consent to release him from it, out of a kindly wish not to stand in the way of his advancement, he would not be free to leave the Service even were it safe for him to do so;

Told him to send the money fast, & there should be no delay on this side of the water.

F. Lay, L.R.

Bedford Hotel, Brighton

July 23. 1862

To Hart.

Summary. [sic]

No license yet, notwithstanding a 5 weeks' siege of Home Office, F.O., & Admiralty. Order in Council will be necessary.

Vessels (4) from Admiralty I hope.

House, godowns, & dockyard at Shanghae above Tong Ka doo.

Mr. Collins as Naval Storekeeper £1500 salary and £500 for house rent. Osborne [sic] 3000 . Burgoyne £1500 with £250 outfit. Commanders Solway & Noel Osborn £800.

"Salamis". Shall get her lines & plans.

Kung had better set apart a certain percentage of Customs revenue for maintenance of naval force.

Enclosed copy of memo. [June 13] laid before Lord Russell.

Article from "Daily News". [Reports of atrocities perpetrated by
Imperial Forces].

Receipt for £27.177.6.7.

We are in perfect accord as to money & fleet. Object is not simply to get so many steamers for so many dollars, but to create a permanent force.

I consented to Glover's going to Shanghai [as acting Commissioner of Customs] on the understanding that he was quite willing to go.

"Do remember in your intercourse with K., my dear fellow, that we have to govern and guide him, and not he us."

G. Lay, L.R.

6 Burton Crescent
Sunday, August 24. 1862.

To Hart

Wrote him a long letter. referred to the postscript of his as to my "glib" tune, & "dictatorial" message to the Prince -

Difficulties respecting license. "Africa" & "Jasper" purchased. One steamer building by White; two by Laird, Bros..

Great work before us if we all pull together.

Terms & conditions not yet drawn up - shall be sent for the information as also full particulars respecting vessels purchased. Flag adopted - to avoid port charges & light dues.

Dock expenses £80 per. month. Insurance of vessels will be a large item.

H. Lay, L.R.

119 Gloucester Terrace,
Hyde Park. W.

October 10. 1862.

Dear Hart,

On my return on the 4th from Germany I found your letters of the 21st June from Woochang, 15th July & 2nd August from Shanghai, in answer to mine of the 9th and 23rd May.

I enclose receipt for £ 12000 recd. from the HongKong Oriental Bank. Kwan's reception of you at Woochang was very handsome: but I am sorry to hear that the Yangtsze regulations are all to be changed, and duties collected at Hankow & Kewkeang, as I fear this alteration will cause us infinite trouble without proportionately, if any, gain to the Chinese. Time will show. You mention having asked Adkins to join us. He would be an acquisition, but I doubt whether Mr. Bruce will give his assent. In your letter of the 15th July, you ask me what in my opinion is the position I ~~share~~ hold relatively to yourself, yours being that it is analagous to that held by a Consul in H.M. Service, Parkes for example, on leave, - that consequently I have nothing specifically to do with Customs business, and cannot give any orders affecting it, while absent from my post.

I do not altogether agree with you. My view of my position is that it is analagous, not to that of Consul, but to that of Plenipo; that it corresponds to Sir Geo. Bonham's when he came home on leave: yours with Bowring's, who acted as his 'locum tenens'. Sir Geo. Bonham had a certain control while away over his Plenipo ship, that is, in so far as general arrangements were concerned. And Bowring was not entitled to make radical changes or initiate measures without some regard to the known opinions and wishes of his absent chief. I take it that in like manner while I have nothing to do specifically with Customs business, and do not give "orders" in regard to it, I have a certain control over the Department of which I am the representative or head - this control being conceded to me by the loyalty to the service of my 'locum tenens'.

I say my position is, so to speak that of Plenipo. It would be so (as in Sir G Bonham's case), were the Chinese Govt. strong and independent. It is doubly so, the peculiar 'status' of our Institution considered. The Chinese Govt. is weak and dependent, and (at present) cannot by itself give the Customs any solid foundation. It leans upon the Customs, and not the Customs upon it. The Customs has to rest upon a bottom of its own forming, which gives it a 'status' separate and distinct from that attaching to it as an establishment pecuniarily dependent upon the Chinese Govt. It has to rest upon the British Govt. without whose sanction and support the Chinese Govt. cannot take any measure, in respect of British subjects ~~in~~ or British trade. Our institution, therefore, being a separate and distinct establishment, it must of necessity have its representative and chief, - for the time being, myself.

To go back to your letter in which you sent the first remittance Without meaning to do so, I fully believe, you reversed our positions. You made yourself Inspector-General, and me your agent. You required me to disburse money belonging to the Chinese Govt. for you, and so vest the ownership of the thing purchased in you. This position I could not accept but I never for one moment, I do assure you, doubted your loyalty to myself, though I did think that your success had carried away your judgment.

As to the "credit of setting the project a-going", you have quite misunderstood a remark of mine at the close of my letter of the 9th May. Your letter which it acknowledged was so full of "I's" that I thought that I would say that the idea of a Chinese naval force had entered other minds besides your own. To the credit of getting Kung's assent to the actual purchase of vessels, I cannot possibly lay any, the slightest, claim: It never entered my imagination to claim any. How could I, seeing that I have been from China since April 1861?

I have only kept copies of two [sic] of my letters to you besides those of the 9th & 23rd May, but, as far as my memory serves me, I am not conscious of having written harshly to you. If I have, I am very sorry for it. I was, I confess, greatly disappointed at your having undertaken the Steam fleet project, without exacting any pledges from Kung in regard to it. Such was my apprehension of the consequences that might ensue, being aware of the opinions of F.O. and of the Press, that I was earnest in my reminders of what should be obtained from him. Hence my

unconscious use of the words "you must", which were addressed not to you, but as to what Kung must do, if he would enable me to carry out the scheme with any success.

I am very sorry that you should have fancied I intended to be harsh or curt to you. No one could have treated me better than you have treated me since I have been away. Fully sensible of this, and entertaining as I do an affectionate regard for you, I have never had any but the kindest feelings towards you. Acquit me altogether of any such intention as you have imagined.

You have reason, and I likewise, to be thankful that you did not send to the United States or to the Continent for Steamers and crews. Had you been instrumental in introducing this sort of irresponsible aid, you would, I am perfectly sure have been stopped by an Order in Council, and all British Subject would from that time have been interdicted from sending aid. There would have been a great stir in the press, & perhaps relations would have been opened with the rebels. The down fall of the Customs would have been a mere matter of time. With rowdies above us, and we deprived of all executive power, I don't see how we could have long remained in Chinese employ. Even now, we shall have hard work to maintain our ground. Ward's doings and Admiral Hope's doings are doing us damage, and have produced more or less a reaction in favor of the Taepings. I send you a slip from the United Service Gazette.

We are going to put an article in Blackwood in December on Chinese policy & the steam fleet. You shall have a copy. The public want setting right upon more than one point.

I have had a talk with Davies since I came back. He will write this mail to tell FitzRoy not to send him any more salary. He has at my request given up his claim to salary at the rate of £3000, and will draw at the rate of £2000 from the balance (some £4000) which he has in the Banks in Shanghai. [sic] So you need not give yourself any further trouble about him. I shall keep him at home until I go out, and all that you will have to do will be not to remit any more salary on his account from Shanghai [sic].

Hughes came to see me the other day. He starts on the 20th with a wife. I thought him much improved by his sojourn in England.

I hope next mail will bring me more money from you. We are now at a stand still for want of money. I have received

£ 31.343.	11.	5
27.177.	6.	7
45.646.	2.	4
3 000	.	.
12 000	.	.
£119.167	0	4

To meet our outstanding liabilities I want £ 140.050, and am thus £20.883 short. To enable me to buy armament, stores, and ammunition, and store ship, respecting all of which not a day should be lost, I want £60.000 more. We are as I say literally at a stand still for want of funds.

I think I told you that the Admiralty offered to sell us the "Diamond" We can get her hull for £8000 but it will cost £7000 more to mast, rig, copper, caulk, and store her ready for sea. Osborn says she has a very fine main deck as well as lower deck: the former would serve us for a temporary hospital. There is no vessel in the market, he thinks half so well adapted for our wants. But I am in debt, and can't afford to buy her, otherwise I would do so forthwith, for she ought to be despatched, filled with ammunition and stores, in December, at the latest! I am most anxious to buy the Armament & Gunpowder &c., while the Admiralty is in the humour, for in the event of a war with the Northern States or such like complication we might find some difficulty, for though we have friends at the Admiralty we have I suspect enemies there too. And to buy powder & shell in the market would cost us twice the sum the Govt. would charge us. But it can't be helped. Kung should have sent the money. He can't expect to get his fleet without it. If I had plenty of the needful, I could push things forward with great rapidity. I should at once pay for double time, & men would work day and night by gaslight. Here the days are very short: it is dusk at $\frac{1}{2}$ past 4, & will soon be dark at 4. Money in this country, where the appliances and means are so perfect, will effect anything: but money you must have ..

I send you 2 copies of the Gazette containing the Order in Council. - I want to get all our vessels & guns and ammunition away if possible, before Parliament meets.-

I smile at your injunctions respecting armour plated vessels, which you think "utterly useless". Osborn is of a totally different opinion, and thinks that the Chinese would be doing the right thing if they made their fleet consist of one vessel, and she an iron plated vessel, - as she would do the work of ten easily and efficiently! But don't be alarmed, we have not gone into armour plates.-

Admiral Hope's work in China will cause us no end of work by & by, I suspect. However, we must take things coolly, and according to the Chinese motto act as circumstances may render expedient.

I look forward most of all for money - money and next to it to your letters from Peking I am much benefitted by the Schwalbach Waters. I only wish I could get another course of them before I return. My wife & child are quite well. She desires her kind regards to you

Believe me, yours &c.
(signed) H:N. Lay

P.S. FitzRoy writes that he has had some difficulty of late to get the monthly allowance - that Woo, Taoutae has forestalled this year's revenue, i.e. he owes 3 million Taels. - that he has borrowed 400.000 Taels from Agra Bank which he is not likely to have the means of paying &c.&c. Can't you stop this squandering of public money through Kung? At all events, you can obtain authority to draw, i.e. to intercept before it reaches the Taoutae's hands, a percentage of the revenue for the maintenance of the steam fleet. I would suggest your doing this at once, but perhaps you have already done so.

J. E/B Bruce Collection.

"Copy"

No.6.

Separate Series

Office of Maritime [sic] Customs
Shanghai, 12th June, 1862.

Sir,

In my despatch marked "No.3 Separate", of the 14th March last, I forwarded Firsts of Exchange of the Oriental Bank Corporation, at six months sight, payable to your order, for the sum of Thirty one thousand three hundred and forty three Pounds eleven shillings and Five pence [£31,343. 11. 5] sterling.

I subsequently requested the Manager of the Oriental Bank Corporation, Hongkong, to forward to you direct Bills of Exchange for any sums of money, paid into the Bank by the Canton, Amoy, and Foochow Customs, to my credit, always retaining in my name a sum of Five thousand dollars. On the 4th Instant, I received a letter from the Manager, Mr. Lormond, [Lamond] stating that he had forwarded to your address Firsts of Exchange for the sum of Twenty seven thousand one hundred and seventy seven Pounds, six shillings and seven Pence [£27,177. 6. 7] sterling, and enclosing Thirds of Exchange for the same.

On the 7th instant, His Excellency Woo, Superintendent of Customs Shanghai, handed me a cheque on the Hai-Kwan Bank for the sum of One hundred and twenty five thousand Shanghai Taels [Tls 125,000].

This money has been collected for me by the Chartered Mercantile Bank of India, London, and China, from which, after deducting the expences of collection [Tls 16.1.3.0], I have received Bills of Exchange payable to your order at six months sight for the sum of Thirty eight thousand One hundred and forty six pounds, two shillings, and four pence [£38,146. 2. 4] sterling: I now enclose 8 Firsts of Exchange for the amount in question.

His Imperial Highness, the Prince of Kung in a despatch received a fortnight ago, directed me to consult officially, on the subject of the steam fleet project, with the Imperial Commissioner Hsieh, and Admiral Sir James Hope. His Highness had heard that steamers could be obtained more readily in America than in England,

and being anxious for their arrival with the least possible delay it seemed expedient to make some alterations in the original instructions.

At my interview with the Imperial Commissioner Hsieh, I explained that contracts had probably been already made in England for the construction of certain vessels, that a considerable sum of money had already been sent to that country, that arrangements were doubtless now being made there for the engagement of fitting and trustworthy officers, that, instead of expediting, any change in the instructions would have the effect of retarding the arrival of the vessels, and that, taking all things into consideration, the most expedient course was to allow the plan to be proceeded with that had been, months ago initiated; the Imperial Commissioner agreed with me entirely, and at once addressed the Tsung-le Yamun to the effect that my original plans ought not to be interfered with. I then waited upon Admiral Sir James Hope, to whom I gave a full account of the manner in which the Prince had been induced to authorise the construction of a steam fleet, and of the various steps which had already been taken to carry out the scheme - Upon my mentioning that Captain Sherard Osborn had consented to superintend the construction of the fleet and afterwards take command of it, His Excellency observed that with an officer in charge, of Captain Osborn's ability and experience, the various details would be properly managed, and that, with reference to the proposed alteration, the course already adopted had better be carried out. The Admiral seemed to be of opinion that vessels of the despatch boat class [such as the "Nimrod", "Snake" &c] are not well adapted to making passages against the north East monsoon, and that Gunboats, similar to those of eighty horse power, draw too much water to be of service in the inner waters of China.

I may here mention that the cause which let to Sir James Hope being mixed up in this matter is that he had recommended that an adventurer named Ward, - who for the last two or three years has been employed by the Shanghai Taoutai in procuring arms and drilling soldiers, and who really has on some occasions fought successfully with his men against the rebels, - should be countenanced in his projects, which, upon being taken by the hand by the Admiral, Mr. Ward [now a Colonel in the Imperial service] developed into the organization of an army and navy - Colonel Ward's bravery is unquestionable, and his enthusiasm has attracted some attention;

it is doubtful, however whether the services rendered by him have been worth the immense expenditure which has been incurred by the Taoutai in following his advice.

The Chinese are shrewd enough to know how powerful he may with safety be allowed to become. My influence with the Prince is sufficient to prevent any effectual interference, on the part of Colonel Ward and his supporters, with the formation of a steam fleet, under proper officers, for the Chinese service.

The Prince continues to display the strongest desire for the arrival of the fleet, or some portion of it.

I shall anxiously await your report, as to the terms upon which officers and men are to be engaged, in order that I may obtain authority to draw funds for monthly expenditure from the various Offices of Customs.

I am,
Sir,
Your obedient Servant,
(Signed) ROBERT HART
Offg. Inspector-General of Chinese
Maritime (sic) Customs.

H.N. Lay Esqre.
London.

K. FL Collection.

8th Sept. 1862 Peking

My dear Lay,

Two long letters of yours 26 June & 10 July came to hand on the 6th and gave me much pleasure to read. I shall write at greater length when I have seen Hart who has been sick at Tientsing. I am also delighted with your views which are precisely mine about supporting and yet not supporting this

Governt. Unless it be disinterestedly taught to do its own work, it will cease to be anything but the dependency of the person or nation that does it for it. Alcock's speeches to Louis Napoleon don't surprise me. Except by accident I never knew him - A - say or do a sensible thing. A man with many good points - but better morally than intellectually - and weak either way, when the 'moi qui vous parle' fit is on him. Why haven't you visited France Sir, and studied the language. Parkes and you exchanged notes I mean my notes - good- cultivate him he has as practical a head as I know and a good and improving heart. What will they do with him now? His return to Shanghai as mere 'cawnsul' can hardly be I should think - I always had thought Hammond meant him to fill my place which indeed he may yet. I rejoice to think you will be here in Spring. Tell me Cooke's [sic] proper direction and send him enclosed please.

My salaam to your wife and your mother and my blessing - for as much as it is worth - on the baby.

Yours always aff.
(Signed) T. Wade

Love to Osborn

APPENDIX VII

Wade to Lay and Lay to Elgin: 1863.

A. FL Collection.

British Legation, Peking

23 June 1863.

My dear Lay,

I had a long talk with Sir F. Bruce in re support etc. He evidently thinks that it would not be advisable for him to come forward insisting on the adoption by the Chinese Gov. of any specific proposition made by you or any one else in regard to the revenue. He is persuaded that the position taken by some of the Ministers (K [leczkowski] especially) of demanding this or that has impressed these people with the notion that we can't do without them. This he says it is most desirable they should be quit of as soon as possible. If they are to be helped by us, it is for them to come forward, and the only chance of compelling them so to do is by the fear they may entertain, as in your case, of being dropped altogether or, as in Gordon's, of seeing men like him withdrawn. I told you the difficulties surrounding this last night. You reply let Sir F. B. do so and so, and the rest follows - Good. Still, as a minister, he must not commit his Gov. before China and his colleagues, farther than the rights of the case demand, and disgusted as he is with the Chinese he does not feel justified, whatever the consequences, in dictating to them, on the subject of their own affairs, in terms so absolute as those that would be necessary. He has no case that authorises him so to do. He is going to tell them again, officially, that if they do not promptly keep the treaty where it has been broken, everyone shall be withdrawn - also, that if the Chinese Gov. cannot do without foreigners, these have a right to have the satisfaction of their money claims guaranteed them, and that unless such guarantees can be given, he will use all his influence to discourage Englishmen from entering or remaining in the Service. This is the most he is prepared to go in the direction you want, and he has more confidence in the success of your personal negotiations from the fix that your threat to resign will put them

in than from any other cause. I think what has modified his zeal is this, that the tone of the Gov., notably towards yourself since you arrived, has shewn that it is imbecile beyond what had been thought of it; that there is in the Central Gov. neither vigor nor ability, but the most abject fear of certain powerful provincials, and the question arises, Is it well, by forcing this Central Gov. to take this or that step that they can only take in entire dependence on foreigners, to link foreign Gov. irrevocably to its destinies? Is it not better, if it shew so much aversion to doing the only thing that save it, to leave it to itself? Of course this involves the abandonment of flotilla, Customs, and goodness knows what, but, quore, is this worse than undertaking the complication inevitable if this Gov. is so weak as to shew no initiative capacity whatsoever? I confess that ever since the Burgevine affair my thoughts have been set in the same direction not, because of the action taken quoad Burgevine, but because of the childish embarrassment & puerile talk the 2nd act of that drama produced at the Yamén. P.S. Of course should you break down [,] the claims of Osborn & men are clear that is if you break down because of a breach of faith on the part of the Chinese Gov. But, I have been thinking much during the night on this point, and it seems to me that you will have to make your ground very clear before your claim can be pushed. I am speaking without your agreement before me; but the line the Chin. Gov. may take if you sell the fleet is this - You were told to buy vessels, etc. You did so and engaged men on the faith of the Chinese Gov.'s promises - continue to trust these. We don't say we won't pay you, but we don't pay in advance and if you can believe us you won't require us to mortgage revenue. If, not believing us, you throw up the concern, on you be the consequences. Give us ships or what they cost; with the men who won't serve without guarantees not originally proposed we have nothing to do.

I should get from them in writing a form of all they say they insist on respecting Customs Flotilla, and all beside. It is certain to be childish and unreasonable and on that I should base farther action either as regards resignation or disbandment. But be very cautious about flinging up flotilla unless you see your way to a clear charge of 'breach of faith' ags. Gov. otherwise your own will have no fighting ground. Would I could send you more comfort.

Ever yours
(Sgd.) T.W.

B. FL Collection

Seymour St. [?] 25th October 1863

My dear Lay,

Just a line to say that I am here and well as I hope you are and politically prosperous. I have told the Chief that I think if the dynasty is not to be overthrown - it must not be thrown over, but supported by the powers interested conjointly declaring that they will support it, if it will adopt the necessary reforms at once. If it will not, they should with like publicity declare that they will not support it, nor any one but a Chinese competent to tranquillize the land, i.e. to reform to the point necessary in finance and executive. If the Tsing will reform I am sure the Chinese don't want a change - wanting only peace at any time. If they won't reform, the announcement that foreigners consider them past hope but will recognise any competent substitute, will induce some respectable Chinese to start. Support (as at present even) of the Tsing must deter any respectable Chinese from coming for. to turn out those imbeciles. I see no other policy that can keep the country from falling to foreign states which fall wd be the beginning of troubles the like whereof etc. Sir Macdonald Stephenson, an engineer of repute is on his way to India where he has done much in rail ways, and goes thence to China hoping etc. - He consulted me as to the expediency of moving the Govt. thro' the Br. Minister I said by no means for all the reasons you do well know, but to consult you and Hart. He wishes it kept very quiet, lest others should compete and I have heard of one competitor yestr. My friends are all pretty well, all out of town where I am alone.

My kind regards to Mrs. Lay.

Ever yours aff.
(Sgd.) T. Wade

C. India Office Library: Elgin Papers.

Peking. September 7, 1863

My Dear Lord,

I sincerely thank your Lordship for your kind note of the 4th March - which did not reach London till after my departure - no less than for your kind support of my application to Lord Russell, from whom I have since heard of my appointment to the Bath.

I am sorry I cannot give Your Lordship a very favourable report of Prince Kung, who seems just now little disposed to trouble himself about his foreign relations. No doubt his time is fully occupied with home affairs. The success too that has of late attended the imperial arms in more provinces than one has contributed to allay the apprehensions he entertained twelve months ago. At the same time, the eagerness with which, under Admiral Hope's auspices, officers of every description - gentlemen and the opposite - have been placed at the disposal of the local officials, - under whose unchecked authority they have been permitted to act, - has done much harm. It has induced the belief in the minds of Prince Kung and his advisers, that they can get all the aid the country requires, without incurring the responsibilities it is of importance they should incur, and without making the return which we naturally look for, - the adoption of a policy towards foreign nations some steps in advance of that hitherto their guide.

The Chinese will as we well know, make no changes except under the pressure of necessity. If we help to remove that necessity, without making our aid conditional, we forego a golden opportunity of forcing the Government to move in the direction we want them to take. - Your Lordship has perhaps heard that one of the "Generals" recently in the employ of the Shanghai authorities has gone over to the Taipings with some 200 followers. I should not be surprised to see filibustering begun on a large scale in China

Believe me, My Lord,
Your faithful servant,
(Sgd.) H.N. Lay

APPENDIX VIII

Documents in Chinese and English Translations, relating to
The Flotilla Project.

A. FO 228/341

"Copy of a despatch from the Foreign Board dated 20th February 1862, the Chinese of which was transmitted to Mr. Lay by Mr. Hart".

The Foreign Board write for the purpose of again urging that the instructions already issued with respect to the purchase of foreign steamers may be carried out without loss of time.

It was settled that the Shanghai and Canton Custom Houses should each contribute 200,000 taels; the Foochow Custom House 100,000 taels, and the Amoy and Ningpo Custom Houses each 50,000 taels towards the above object. Sieh, the Governor of Keangsoo, was desired to make the necessary arrangements, and in consequence of a Memorial submitted by us to His Majesty, that functionary was commanded to lose no time in communicating with the various Customs Houses and in collecting the above amounts, while the Governors-General and Governors of Canton and Foochow were alike ordered to look out for and hire steamers [for the protection of those ports]. The Acting Inspector-General was requested to confer with Sieh, and act without delay.

As Shanghai is now threatened by the rebels, the Steamer project must on no account be delayed. We have again memorialized the Emperor, urging haste on the part of the Authorities. And His Majesty having graciously granted our request, it becomes our duty to inform the Acting Inspector-General thereof, and to beg him by all means to hurry on the arrangements for the purchase of Steamers, in concert with Sieh.

We understand that there are several classes of Steamers: there is the mail steamer, the merchant steamer and the War Steamer: that the first is very small, the second unwieldy and not available, like the third for warlike purposes. We understand further, that the Mail Steamers and Merchant Steamers are paddle-wheel vessels, that the War steamers are screw-vessels. We earnestly hope that war screw vessels will be purchased. This is of great importance.

As to the people to be employed on board the Steamers, the Acting Inspector-General when in Peking said that if Chinese were employed in the first instance, they would be found incompetent, and that, in order to render (the vessels) efficient, it would be better to employ foreigners, subjects of non-Treaty powers. Upon this point, we request him to confer with Sieh, and arrange as may be deemed advisable. If, owing to his engagements consequent upon the critical position of Shanghai, Sieh should not be able to give his attention to this matter, the Acting Inspector-General must hasten to Canton and confer with H.E. Laou on the subject. We have sent instructions to this effect to Sieh and Laou and desired them to act without delay.

With regard to the expense of the maintenance of the fleet, let the amount be that stated in the reduced (?) memo. of the Acting Inspector-General. As to the funds (for the purchase of the Steamers,) the Canton, Foochow, and Shanghai Authorities have reported themselves prepared to pay the amount required, and we have accordingly sent orders to them to hold those amounts in readiness. As soon, therefore, as this letter reaches the Inspector-General, let the matter be proceeded with with all speed. Let there be no delay on any account, for delay might involve serious consequences. Hasten! Hasten!

To the Acting Inspector-General Hart.

Tungche 1st year, 1st Moon, 22 day
i.e. February 20th 1862

B.

Prince Kung's Authorisation to H.N. Lay; FL. Collection.

劄

Dated October 24 1862.

Received 15th January
1863.

大清欽命總理各國事務和碩恭親王 為

劄行事查咸豐十一年秋間據署總稅

務司赫 疊次面稱水師之利必須購

買外國船礮方臻妥協嗣由該署總稅

務司呈請飭令各關抽收銀數以備購

買船礮等項之用當經本衙門具奏奉

旨允准照辦並行文各該關飭令照數撥銀

解交署總稅務司赫 手收並劄知署

稅務司令其迅速妥辦各在案茲署總
稅務司到京呈稱購買船礮一切事宜
已行文總稅務司李 在英國代辦業
將各關所撥之銀付寄李總稅司趕緊
行辦等因並據面稱李總稅司才大心
細實能勝任辦理裕如請另發給劄文
一件俾李總稅務司持以為據可以妥
速籌辦各等語本爵查署總稅務司赫

經辦購買船礮各事均能悉心籌畫無微不至今據呈請嗣後均交該總稅務司一手經理自更周妥為此劄行該總稅務司接手管理此事有最要三項一購買船隻並各船內應用之礮藥煤觔以及各項零星等件一邀請應坐各船之武弁招募礮手水手人等以及立定各項之合同一酌留所需銀兩以便照

各項合同發給俸祿工錢以及將來備
賞各款之用以上三項支發均交該總
稅務司一手經理所有各關抽收銀數
除各關已交之銀業由署總稅務司赫
付給該總稅務司收領外其餘各關未
交之款將來陸續交付署總稅務司赫
仍由署總稅司手交該總稅務司李
查收支用一切均責成該總稅務司一

人專理至應如何設法妥辦或派人協同辦理之處均由該總稅務司自行酌量妥辦現在中國需用此項船礮甚急務即迅速辦就駛赴上海聽候撥用並宜工堅料實盡善盡美以副本爵殷殷委任之至意至或此項船礮尚未辦定駛赴中國之先而該總稅司已經回任或別有事故未能始終其事即由該總

稅司自備申陳另荐一切實可靠之人
以資接管庶日後辦理一切可專責成
也切切特劄

右劄總稅務司李泰國准此

同治元年玖月初貳

日

C. FO 17/395. Enclos. in 178. Bruce to Russell Nov. 19, 1863. This copy from pamphlet of correspondence of documents submitted by Capt. S. Osborn to the Admiralty in Jan. 1864.

"Translation of Prince Kung's letter of instructions to Inspector-General H.N. Lay".

Pekin, Oct. 24, 1862.

The Prince of Kung, charged by Imperial authority with the superintendence of foreign affairs, addresses a communication to the Inspector-General, Mr. H.N. Lay.

The official records show that at the interview which the Acting Inspector-General had with me in the autumn of 1861, he represented that, in order to render our navy efficient, it was absolutely necessary that foreign vessels and foreign guns should be procured. He subsequently addressed me in writing, begging, that orders might be issued to the custom-houses to contribute towards the purchase of foreign vessels and guns. The Foreign-office thereupon memorialized the Emperor on the subject, and His Majesty's assent having been obtained, orders were issued to the custom-houses to pay into the hands of the Acting Inspector-General the amount sanctioned for the above purpose, and the Acting Inspector-General was desired to act without delay.

The Acting Inspector-General has now come to the capital, and apprised us that all the arrangements connected with the purchase of the vessels and guns he has officially handed over to the Inspector-General, Mr. Lay, to carry out on his behalf in England, and that he has remitted the moneys paid by the custom-houses to the Inspector-General Lay, who is proceeding in the matter with the utmost dispatch.

Mr. Hart has stated further that the ability of the Inspector-General Lay is great, and that he possesses a mind which embraces the minutest details; that he is, therefore, fully competent to make the necessary arrangements with more than a satisfactory result, and he has accordingly requested us to address a dispatch to the Inspector-General Lay to serve as his authority.

In any arrangements which the Acting Inspector-General might have made with respect to the purchase of vessels and guns, there is no doubt that he would have taken the greatest pains and would have left no point unconsidered, but as he has now requested that the management of the whole affair should be entrusted to the Inspector-General, this will be, of course, still more satisfactory.

I therefore address this dispatch to the Inspector-General, and transfer the management into his hands.

There are three important points:-

1. The purchase of the vessels, guns, gunpowder, coal, and the miscellaneous articles for the use of the vessels.
2. The engagement of officers, gunners, seamen, and others for services in the vessels; and the arranging the terms and conditions of every description of agreement.
3. The retention, as proposed, of a sum of money to meet the salaries and wages that may be settled by the agreements, and also to provide for the payment of compensations and other items in time to come.

The above three points we leave to the Inspector-General to dispose of as, in his discretion, he may see fit.

The money already collected from the custom-houses has been transmitted through Mr. Hart to Mr. Lay, who is alone charged with the responsibility of its disbursement; and we leave it to Mr. Lay to appoint, if he think fit, a person to help him, and also to make whatever arrangements may in his judgement seem desirable, with a view to successful carrying out of the objects in view.

China is in urgent need of the vessels and guns; effort should therefore be made to effect with the least possible delay their completion and despatch [sic] to Shanghai, there to await orders. The work (put into the vessels) should be strong, the materials genuine, both of super-excellent quality, that so the high trust we have confided (to Mr. Lay) may be fulfilled.

In the event of the Inspector-General's returning to his post before these ships and guns are ready and despatched to China, and if any other circumstances, which we cannot here foresee, should arise, let the Inspector-General report thereupon to us himself, and recommend a person trustworthy in all respects to act in his room - so that, in respect of the arrangements subsequently made,

the responsibility may be definitely fixed.

N.B. For Ch'ing interpretation see enclosure (n.d.) in Kung to Bruce, Nov. 2, 1863. FO 230/78 No.60. (FO 17/395. Enclosure in No.178 Nov. 19 and BPP [3271],)

APPENDIX IX

Hart's Views on the Flotilla disbandment - Jan. 1864.

A. E/B. Bruce Collection: Enclosure in Bruce to Russell.

Private. Feb. 2, 1864.

"Extract" Mr. Hart to Mr. Brown

The history (of the flotilla) may be summed up in four sentences. I broached the subject in 1861; the Yamun (Peking Foreign Board) ordered my propositions to be acted on in 1862. My propositions approved of by the Yamen were communicated to Lay to be carried into effect, but he, instead of acting on them, proceeded to carry out other views, neglecting at the same time to report the change and leaving it to be understood that the original scheme was being carried into effect. It was not until his arrival in Peking in June that I knew what he had done, and as his arrangements were ones that had not only not been reported to the Yamun but were in direct opposition to the conditions on which the Yamun sanctioned the experiment - hinc illae lacrymae.

Shanghai

Jan.y 13, 1864

B. Hart's Views on the Flotilla disbandment - Jan. 1864.

[Same as A]

Shanghae, 14th January, 1864.

My dear Sir Frederick,

I duly received your very kind letter of the 17th Nov. forwarded by the Tsung le Yamun in the same cover with my appointment: Mr. Lay also handed me one of the 22nd. of the same month having reference to his claims.

Any one who, like Mr. Lay, thoroughly distrusts the Chinese, and believes that the only way to manage, is to drive them, can easily put together facts and arguments sufficiently specious to cause many to coincide in his views; but, for my part, though I have not infrequently been unable to induce them to follow my suggestions, I must say that my want of success was attributable rather to my inability to convince, than to their unwillingness to be led. The dictatorial attitude that had proved successful with a Taoutae at a distance from the capital, turned out to be mistakenly applied when assumed towards the high functionaries at Peking: and indeed that Taoutae who has yielded to it originally was the one who eventually resented it the most. To say, that nothing is to be hoped from the present government because it does not at once turn its attention to the construction of railroads, the laying down of electric telegraph wires, the negotiation of foreign loans, and the introduction of all the appliances that exist among the people by whom it has been thrashed, and for whom it has heretofore had an ignorant contempt, is, to my mind, justified by neither logic nor common sense. What ought to be expected from the government is, that it will endeavor to carry out faithfully the treaties into which it has entered; and if, in addition to peaceful acting up to the terms of those treaties, it listens with attention to the representations made by foreign ministers, it will I think be enough to hope for, even though no other result became apparent for a quarter of a century. We cannot call upon them to change at once; and, indeed, any such demand is more likely to delay than to accelerate a wholesome change. Experience will eventually convince the government, that in no way can it get on better with foreign powers than by adhering to its engagements, and carrying them into effect in a liberal

spirit: but for experience, time must be allowed: and to management of a rational kind, rather than to dictation, must we look, if, while giving the government time, any active attempt be made to lead it to profit by experience. Dictation may succeed for a time with weak people, as it did with Hsieh while Taoutae; but, depend upon it, with the acquisition of what they suppose to be strength, they will break out in opposition, just as that worthy did when he took his seat at the foreign board at Peking. Of one thing I am perfectly certain, & that is, that had the British minister at Peking been a less considerate person than yourself, matters would not, in any respect, have gone on so well as they have done. The Chinese have a thorough appreciation of courtesy, and have no objection to submit when rationally convinced. Allowance must be made for the difficulties of the position of the few men who have the pluck to form the foreign board, and who, as members of it, expose themselves to inimical insinuations, and incur responsibilities of a kind that others, - ignorant, exclusive, anti-foreign, - are free from; and they must be given time, and be allowed to shelter themselves against their opponents by such breastworks as they can construct out of quotations from treaties.

I quite concur in your remark that the head of the foreign establishment could not now reside at Peking without the odium and responsibility of the errors the Chinese will commit falling upon him; I am quite satisfied to make Shanghae my headquarters, - my orders are to do so; but I am likewise directed to visit Peking, whenever I think the requirements of business make it advisable to do so. My wish is to confine myself to customs' business: on the other hand, I wish to get the offices into efficient working order so that the merchants may have no cause for complaint, and the Chinese suffer no loss of revenue; and, on the other, I should merely desire to give such general advice as shall lead the Chinese authorities to act liberally by, and look favourably upon, the interests of foreign commerce.

Capt. Osborn and the last of the fleet left Shanghae on the 12th of December.

Mr. Lay and myself signed the accounts on the 4th instant, and he left Shanghae on the 9th. He handed over to me certain balances, and I gave him a simply worded discharge, in which he

was released from all claims, with the exception of such as had reference to certain sums which were distinctly specified in the document. He left with me a copy of the accounts to be forwarded to you; I don't like to send them overland, but shall forward them by steamer.

You will have heard before this of the capitulation of Soo Chow, after Gordon's successful, but severely contested, attack on the stockades near the Low-mun. When the Wangs came out to tender their submission, they refused to disband their men and insisted upon holding some of the city gates. The Footae had previously promised that, not only should there be no slaughter, but the Wangs should be decorated with buttons &c, in the event of a surrender which was to be, in other respects, unconditional. When the Wangs refused to disband their men and insisted on holding certain gates, they violated their part of the bargain previously entered into. It was then open to the Footae to acquiesce in, or to object to the demand: in the event of his acquiescence, he had two things to dread, - 1^o a recurrence of the Tae-tsang treachery, in which place some five hundred Imperialists, - who had entered the city, which, having surrendered, was allowed to be garrisoned by the Taepings, - were beheaded, and 2^o the Wangs with their men might at any time cause grave troubles; acquiescence was accordingly not to be thought of for a moment. On the other hand, supposing the Footae to refuse acquiescence, he had only three courses before him: the first was to allow the Wangs to return to the city, and, to have done that, considering that Gordon's force had already gone back to Quinsan, would have in all probability entailed a sally that must have resulted in the dispersion of the Footae's troops; the second was to make prisoners of the Wangs, but such an act would have been soon known and would have been followed by the closing of the gates, and the butchery of such of the Imperialists as had entered the city; the third was to act as the Footae ~~did~~, - to take off the heads of the Wangs at once, and to occupy the city without delay.

Gordon looked upon the Footae's conduct as a gross and treacherous breach of good faith; and since that he has merely garrisoned Quinsan, and has refused to take part in any active operations. But I am inclined to think, that, when he and Genl. Brown decided on following that course, they were not fully acquainted with the nature of the original verbal convention, and

that they did not make allowance for the difficulty in which the Footae found himself involved when he met the Wangs. The action taken may result in a determination to place the force more on an imperial than on a local footing; but I really fear it will have a bad effect, and in this way - it may cause the Chinese to see that such a force is, not only powerful, but unmanageable, and they may thence be led to place greater opposition than ever in the way of military reform.

The taking of Soo Chow was not followed by the usual slaughter: the Wangs, it is true, were beheaded, but there was no massacre. Moffit, Gordon's surgeon, tells me that very few people lost their lives - certainly not five hundred, and his account differs totally from that given by Prince Wittgenstein, in whose case the excitement of the moment allowed the imagination to obscure the perceptive faculties.

Had the Wangs made no fresh demands, and had the city been peacefully occupied, Gordon would at once have gone Nanking-wards, and Taepingdom would have received its death blow before the Chinese new year. Without knowing all the circumstances it is difficult to pass judgment on the Footae; but there are cases in which circumstances "mitigate the slackness of wrong and weaken the force of right", and the present seems to be one of them.

At the ports, matters are going along quietly.

Apologizing for the length of this letter, - a much longer one than I had intended when I sat down, -

I remain,
with much respect,
Yours very faithfully,
(signed) ROBERT HART.

The Hon:
Sir Frederick W.A. Bruce, K.C.B.,
&c. &c. &c.
Peking.

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1867

XLVII

41

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